

1 UNITED STATES DISTRICT COURT
2 WESTERN DISTRICT OF TEXAS
3 AUSTIN DIVISION

4 UNITED STATES OF AMERICA) Docket No. A 12-CR-210 SS
5 vs.)
6 JOSE TREVINO-MORALES (3))
7 FRANCISCO ANTONIO)
8 COLORADO-CESSA (6))
9 FERNANDO SOLIS-GARCIA (7))
10 EUSEVIO MALDONADO-HUITRON(11))
11 JESUS MALDONADO-HUITRON (18)) April 25, 2013

12 TRANSCRIPT OF TRIAL ON THE MERITS
13 BEFORE THE HONORABLE SAM SPARKS
14 Volume 9 of 15

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22 Proceedings reported by computerized stenography, transcript
23 produced by computer.

24

1 **I N D E X**

		<u>Direct</u>	<u>Cross</u>	<u>Redirect</u>	<u>Recross</u>
2	<u>Witnesses:</u>				
3					
4	Raul Guadalajara-Guia		6, 14		
5			26, 48	49	54, 55
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7	Rene Amarillas	56	67, 70		
8	William J. Johnston	71	94, 95		
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2	<u>Government's</u>		
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1		E X H I B I T S (Continued)		
2		<u>Offered</u> <u>Admitted</u>		
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08:30:26 1 THE COURT: All right. Anything before we bring in the
08:30:33 2 jury?

08:30:33 3 MR. GARDNER: Nothing from the government, your Honor.

08:30:35 4 MR. MAYR: No, sir.

08:31:00 5 THE COURT: Let's bring in the witness.

08:32:49 6 (Jury present.)

08:32:52 7 THE COURT: Members of the jury, since we last were
08:32:54 8 together yesterday afternoon, late, has anybody attempted to talk
08:33:00 9 to you about this case?

08:33:02 10 JURORS: No.

08:33:04 11 THE COURT: Have you talked to anybody about the case?

08:33:05 12 JURORS: No.

08:33:05 13 THE COURT: And have you learned anything at all,
08:33:08 14 outside the presence of each other in this courtroom, about this
08:33:12 15 case?

08:33:12 16 JURORS: No.

08:33:13 17 THE COURT: All right. Thank you. Show negative
08:33:16 18 responses to all questions by all jurors.

08:33:18 19 Mr. Guadalajara, you understand you're still under oath
08:33:22 20 to tell the truth?

08:33:23 21 THE WITNESS: Yes, sir.

08:33:23 22 THE COURT: All right. You may proceed.

08:33:25 23 CROSS-EXAMINATION (Resumed)

08:33:25 24 BY MR. FINN:

08:33:26 25 Q. Thank you, your Honor. May it please the Court.

08:33:28 1 Good morning, Mr. Guadalajara.

08:33:29 2 A. Morning, sir.

08:33:30 3 Q. I am not Guy Womack and I am not from Houston. My name is

08:33:33 4 David Finn and I represent Jose Trevino. And I just had a few

08:33:39 5 more questions for you, okay?

08:33:40 6 A. Okay, sir.

08:33:41 7 Q. If I'm not clear, ask me to rephrase and I'd be happy to do

08:33:45 8 so. Fair enough?

08:33:46 9 A. Fair enough, sir.

08:33:47 10 Q. How much cocaine do you think that your and your group moved

08:33:52 11 into the United States? Yesterday, I think you said one of your

08:33:54 12 federal cases, you were responsible for about seven kilos, and in

08:33:59 13 another case you were responsible for, I think you said, two

08:34:03 14 kilos, right?

08:34:05 15 A. It was five and seven, sir.

08:34:06 16 Q. Five and seven?

08:34:07 17 A. Yes, sir.

08:34:08 18 Q. Okay. But that's not all the cocaine that you brought into

08:34:10 19 the United States, is it?

08:34:12 20 A. No, sir.

08:34:13 21 Q. Please tell the members of this jury how many kilos you

08:34:17 22 think overall that you were responsible for bringing into the

08:34:21 23 United States.

08:34:22 24 A. Over during three years?

08:34:25 25 Q. Well, you started with Mr. Cuellar in or around 1993 or

08:34:31 1 1994, right?

08:34:32 2 A. Yes, sir.

08:34:32 3 Q. And you worked with that crew for several years, correct?

08:34:37 4 A. Yes, sir.

08:34:37 5 Q. So I know it's probably hard to add it all up, but are we

08:34:42 6 talking about hundreds? Maybe thousands of kilos of cocaine?

08:34:45 7 A. Yes, sir. Thousands of kilos of cocaine.

08:34:47 8 Q. More than a thousand, correct?

08:34:49 9 A. More than a thousand, sir.

08:34:51 10 Q. And at least one time, 100 kilograms of cocaine was

08:34:56 11 intercepted by law enforcement in Seguin, Texas, and you

08:34:59 12 hightailed it back to Mexico, correct?

08:35:01 13 A. Yes, sir.

08:35:02 14 Q. But you're only being held responsible for less than ten,

08:35:06 15 correct?

08:35:07 16 A. Yes, sir.

08:35:09 17 Q. Now, how long ago were your arrests for the Eastern District

08:35:13 18 case and the San Antonio case? Couple of years?

08:35:17 19 A. No, sir. About a year.

08:35:20 20 Q. Year? Well, you interviewed with the agents on November

08:35:25 21 1st, 2011, and I assume that was after you were arrested and in

08:35:29 22 custody, correct?

08:35:30 23 A. Yes, sir.

08:35:31 24 Q. So it's been more than a year. It's been at least a year

08:35:34 25 and a half, correct?

08:35:35 1 A. Okay. Yes, sir.

08:35:36 2 Q. But you haven't been sentenced on either case yet, correct?

08:35:40 3 A. Yes, sir.

08:35:41 4 Q. So you and your lawyer -- by the way, just out of curiosity,

08:35:45 5 what is your lawyer's name?

08:35:47 6 A. Frank Perez.

08:35:48 7 Q. Frank Perez. Is that right?

08:35:52 8 A. Yes, sir.

08:35:52 9 Q. The jury's heard that name several times in this trial.

08:35:55 10 So you and your lawyer and the government have agreed

08:35:58 11 to kick the can down the road on sentencing so that you can

08:36:02 12 provide information and maybe get a benefit, correct?

08:36:05 13 MR. GARDNER: Your Honor, I'm going to object to this

08:36:06 14 as an improper question. If Mr. Finn wants to get into all the

08:36:11 15 ramifications of his sentencing, and the guidelines, and the

08:36:12 16 amount of relevant conduct, the government's more than happy to

08:36:15 17 do that. But right now, it is not a proper question.

08:36:18 18 THE COURT: Well, ladies and gentlemen, the judge in

08:36:23 19 whose court the case is pending is in charge of sentencing and in

08:36:27 20 charge of when sentencing will accomplish. The parties may

08:36:33 21 request postponement, but the judge makes that decision, not any

08:36:37 22 of the parties.

08:36:40 23 You may proceed, sir.

08:36:41 24 Q. (BY MR. FINN) Thank you, sir.

08:36:42 25 Mr. Guadalajara, when you were moving all this dope in

08:36:45 1 and out of the country and, also, when you were moving around in
08:36:47 2 the United States, were you ever armed? Did you ever carry a gun
08:36:50 3 for protection?

08:36:51 4 A. I never had a gun or anything like that, sir.

08:36:53 5 Q. Did you ever move any guns or help anybody move any guns
08:36:57 6 down to Mexico for the Zetas?

08:36:59 7 A. No, sir.

08:36:59 8 Q. Okay. Do you have any criminal history other than the two
08:37:05 9 federal cases that are pending?

08:37:06 10 A. No, sir.

08:37:07 11 Q. So up until the two federal cases, your record was clean,
08:37:12 12 correct?

08:37:12 13 A. Yes, sir.

08:37:13 14 Q. How many times would you say -- let's say over there --
08:37:17 15 well, since your cocaine business started in, I guess, 1993, how
08:37:22 16 many times would you say that you came into the United States
08:37:27 17 from Mexico? Many times?

08:37:29 18 A. Many times. 1993, I didn't move no coke. I was moving
08:37:33 19 weed.

08:37:33 20 Q. You were moving weed then?

08:37:34 21 A. Yes, sir.

08:37:34 22 Q. Okay. But give the jury an idea how many times you left the
08:37:38 23 United States. Because you're a U.S. citizen, correct?

08:37:40 24 A. Yes, sir.

08:37:41 25 Q. You went down to Mexico and then, you came back to the

08:37:44 1 United States. Did you normally drive or did you fly?

08:37:47 2 A. I drive.

08:37:48 3 Q. You drive. Okay. And, you know, when you come into the

08:37:53 4 United States, there's a border agent, and you've got to be

08:37:57 5 processed to make sure that you're legal, correct?

08:37:59 6 A. Yes, sir.

08:38:00 7 Q. And did you come into the U.S. over the last 10 to 15 years,

08:38:06 8 10, 20, 30, 50 times?

08:38:09 9 A. Yes, sir.

08:38:10 10 Q. And how many times when you came into the U.S. were you

08:38:14 11 handcuffed to a chair and interrogated?

08:38:16 12 A. Never did. My first time.

08:38:18 13 Q. Never happened?

08:38:19 14 A. No, sir.

08:38:21 15 Q. Do you have any brothers?

08:38:22 16 A. One brother.

08:38:23 17 Q. Is he on the Most Wanted list?

08:38:26 18 A. No, sir.

08:38:29 19 Q. How much money would you say that you made during your

08:38:33 20 career moving weed and/or cocaine?

08:38:37 21 A. Have no idea, sir.

08:38:39 22 Q. Well, \$10? \$10,000?

08:38:41 23 A. Maybe about \$500,000.

08:38:43 24 Q. 400,000?

08:38:44 25 A. Yes, sir.

08:38:45 1 Q. And were you paid in cash?

08:38:47 2 A. Yes.

08:38:47 3 Q. And did you open a checking account and put that cash in a

08:38:50 4 checking account?

08:38:51 5 A. No, sir.

08:38:52 6 Q. Why not?

08:38:53 7 A. Spent all the money.

08:38:54 8 Q. You spent it all?

08:38:55 9 A. Yes, sir.

08:38:56 10 Q. Wine, women and song? Or what did you spend it on?

08:38:59 11 A. I spent it on houses.

08:39:00 12 Q. On what?

08:39:00 13 A. My house.

08:39:01 14 Q. On your house. So you told the jury yesterday that you had

08:39:13 15 met with "40" and "42" down in Mexico, correct?

08:39:17 16 A. Yes, sir. That is correct.

08:39:18 17 Q. And there was a horse race?

08:39:19 18 A. Yes, sir.

08:39:20 19 Q. How did you get down there? Did you drive?

08:39:22 20 A. Yes.

08:39:23 21 Q. So you knew where you were going?

08:39:26 22 A. I knew I was going there, but I didn't know that we were

08:39:28 23 going to be there.

08:39:28 24 Q. Okay. Did you ever go down to Mexico with the FBI and help

08:39:32 25 them find "40" or "42"?

08:39:34 1 A. No, sir.

08:39:36 2 Q. You understand that "40" has a bounty on his head for \$8

08:39:42 3 million. Did you know that?

08:39:43 4 A. No, sir.

08:39:46 5 Q. But you never went down -- nobody from law enforcement ever

08:39:49 6 said, hey, these guys are really, really wanted. You've been

08:39:53 7 there. How about you take this down and show us where these guys

08:39:56 8 are? That never happened?

08:39:58 9 A. Never happened, sir.

08:40:00 10 Q. Have you ever -- you've got a brother, right?

08:40:03 11 A. Yes, sir.

08:40:04 12 Q. What kind of guy is your brother?

08:40:06 13 A. He's a working man.

08:40:07 14 Q. Hard-working man?

08:40:08 15 A. Yes, sir.

08:40:10 16 Q. Based on your criminal activity, has any exposure flown off

08:40:16 17 on him?

08:40:17 18 A. No, sir.

08:40:19 19 Q. Have you ever heard the saying, you get judged by the

08:40:22 20 company that you keep? Have you heard that before?

08:40:25 21 A. Yes, sir.

08:40:25 22 Q. Have you heard the saying, you can pick your friends but not

08:40:28 23 your family?

08:40:29 24 A. Yes, sir.

08:40:30 25 Q. And all you know about Jose, my client, is that he's a

08:40:34 1 hard-working bricklayer who wakes up at 5:00 in the morning,
08:40:38 2 right?

08:40:40 3 A. I never heard that, sir.

08:40:43 4 Q. Yesterday, didn't you tell this jury that, supposedly, "40"
08:40:48 5 said that his brother Jose was a hard-working guy, everyday Joe
08:40:52 6 who woke up at 5:00 in the morning?

08:40:54 7 A. "40" told me this when we were watching the movie that after
08:40:56 8 work, Jose waking up every time at 5:00 in the morning. He never
08:41:02 9 imagine himself in the horse business.

08:41:03 10 Q. So Jose exchanged a 5:00 a.m. wake-up call as a bricklayer
08:41:09 11 for a 5:00 a.m. wake-up call as a horse trainer. Is that fair?

08:41:13 12 A. That's what I said.

08:41:13 13 Q. Okay. Thank you. That's all I have, your Honor. Thank
08:41:16 14 you, sir.

08:41:17 15 THE COURT: Mr. DeGeurin.

08:41:21 16 CROSS-EXAMINATION

08:41:21 17 BY MR. DEGEURIN:

08:41:47 18 Q. Mr. Guadalajara, I'm Mike DeGeurin.
08:41:57 19 You met with agents and gave them information in
08:42:06 20 interviews in the past, have you not?

08:42:08 21 A. Yes, sir.

08:42:08 22 Q. And as already has been pointed out, and which you've
08:42:14 23 admitted to, is that your hopes are to lower your sentence by
08:42:22 24 giving what they call substantial assistance to the government,
08:42:25 25 right?

08:42:26 1 A. Nobody promised me anything, sir.

08:42:31 2 Q. I thought you already admitted that you are seeking a

08:42:37 3 benefit.

08:42:38 4 A. I admitted that, but they didn't promise me anything.

08:42:40 5 Q. No, no. I didn't say that they promised you how far down

08:42:44 6 your sentence would be. But you have an agreement that if you

08:42:48 7 substantially assist the government, they may request the judge

08:42:52 8 in another district to be light on you.

08:42:55 9 A. Yes, sir.

08:42:56 10 Q. Is that correct?

08:42:57 11 A. Yes, sir.

08:43:09 12 Q. Well, what date -- isn't it true that sometime in 2011, you

08:43:16 13 met with one of these agents in the courtroom in San Antonio?

08:43:22 14 A. Yes, I did.

08:43:23 15 Q. When was that?

08:43:27 16 A. It was in summer, May.

08:43:34 17 Q. Was anybody in a hurry when you spoke to them, or did you

08:43:36 18 sit down and answer all the questions?

08:43:40 19 A. It was just my agent up there.

08:43:42 20 Q. Huh?

08:43:43 21 A. There was an agent.

08:43:48 22 Q. And did you need an interpreter or did you have an

08:43:52 23 interpreter?

08:43:52 24 A. I needed an interpreter. Well, they had a lady there. That

08:43:56 25 whatever I didn't understand, they will tell me in Spanish.

08:43:59 1 Q. In case you didn't understand the question?

08:44:01 2 A. Yes, sir.

08:44:02 3 Q. You had an interpreter to help?

08:44:05 4 A. Yes, sir.

08:44:09 5 Q. When you met in 2011 in San Antonio with an agent involved

08:44:14 6 in this case, you did not mention Mr. Francisco Colorado, did

08:44:23 7 you?

08:44:23 8 A. I didn't tell them that, sir.

08:44:28 9 Q. You told the agents that Carlos Nayen's father owned Pemex

08:44:37 10 Oil Company?

08:44:37 11 A. Yes, at that time what I did, sir.

08:44:39 12 Q. Didn't give them a name, did you?

08:44:41 13 A. I did. It was "Pancho," sir.

08:44:48 14 Q. You mentioned a race track in New Mexico yesterday.

08:44:56 15 A. Yes.

08:44:56 16 Q. But I didn't get the name of the race track.

08:45:00 17 A. It was in Morelos, Coahuila, sir.

08:45:02 18 Q. Los?

08:45:03 19 A. Morelos, Coahuila.

08:45:08 20 Q. Is that N-O-R-E-L?

08:45:10 21 A. M-O-R-E-L-O-S.

08:45:15 22 Q. Los Morelos, Coahuila?

08:45:19 23 A. Morelos, Coahuila.

08:45:25 24 Q. And would you tell us the clothing that you say that

08:45:35 25 Mr. Colorado was wearing that day when you saw him?

08:45:37 1 A. He was wearing blue jeans and I don't know what was his top, sir,

08:45:41 2 because they were sitting down on the dirt.

08:45:44 3 Q. You saw him down on the dirt?

08:45:46 4 A. Yeah. They were sitting down -- he was sitting next to "40"

08:45:49 5 on the finish line.

08:45:50 6 Q. I'm sorry?

08:45:50 7 A. I was across the track.

08:45:54 8 Q. You were across the track?

08:45:56 9 A. Yes, sir. Not exactly straight with them, like five meters

08:46:01 10 away.

08:46:02 11 Q. I'm sorry.

08:46:02 12 A. Not straight with them, like five meters in front of them.

08:46:07 13 Q. Not straight across? Five meters down?

08:46:09 14 A. Yes, sir.

08:46:10 15 Q. And across the track?

08:46:11 16 A. Yes, sir.

08:46:12 17 Q. And do you claim to have spoken to him?

08:46:20 18 A. No. I didn't speak to him, anything like that.

08:46:52 19 Q. One last thing I'd like to ask you about. Listen to me

08:47:01 20 carefully.

08:47:04 21 In order to be used as a witness in a case, you

08:47:12 22 understand you have to have some evidence that would be relevant

08:47:19 23 to that case. You know the word "relevant"?

08:47:22 24 A. No, sir.

08:47:23 25 Q. Okay. You understand that in order to substantially assist

08:47:28 1 the government, you must have something --

08:47:31 2 MR. GARDNER: Your Honor, we object to these questions

08:47:32 3 being improper. He's asking the witness to draw a legal

08:47:36 4 conclusion.

08:47:37 5 MR. DEGEURIN: I didn't mean a legal --

08:47:38 6 THE COURT: Oh, it's not a legal conclusion.

08:47:43 7 Q. (BY MR. DEGEURIN) Let me start over, sir.

08:47:45 8 Do you understand that in order for you to give

08:47:49 9 substantial assistance, you have to have some information that

08:47:55 10 would substantially assist the government, right?

08:47:58 11 A. Yes, sir.

08:48:03 12 Q. And if you don't, you don't get the benefit that you want,

08:48:08 13 right?

08:48:08 14 A. Yes, sir.

08:48:10 15 Q. Did I understand you correctly that to the jury yesterday,

08:48:24 16 you've never spoken or met personally Mr. Colorado?

08:48:27 17 A. Yes. That's what I said.

08:48:28 18 Q. You've never met him?

08:48:29 19 A. I never met him, sir.

08:48:30 20 Q. I'm sorry?

08:48:31 21 A. I never met him.

08:48:33 22 Q. Okay. May I for demonstrative purposes, your Honor?

08:48:41 23 MR. GARDNER: May I see it, Mr. DeGeurin?

08:49:12 24 Q. (BY MR. DEGEURIN) By the way, is your name Raul?

08:49:26 25 A. Yes, sir.

08:49:27 1 Q. Guadalajara?

08:49:28 2 A. Yes, sir. That's my name.

08:49:30 3 Q. Guia? Did I spell correctly?

08:49:38 4 A. Yes, sir.

08:49:39 5 Q. Is it true that you -- I may repeat myself. I want to make

08:49:43 6 sure I write this down. Never met Mr. Colorado, right?

08:49:55 7 A. That is true, sir.

08:50:21 8 Q. Now, Mr. Guadalajara, I'm demonstrating to you how slowly my

08:50:52 9 mind works this early in the morning.

08:50:54 10 You saw a person you were told was "Pancho" across a

08:50:58 11 race track.

08:50:59 12 A. Yes, sir.

08:51:00 13 Q. And what year was that?

08:51:02 14 A. 2011. 2010. At the beginning of 2010.

08:51:09 15 Q. Early 2010?

08:51:10 16 A. Yes.

08:51:11 17 Q. Did you ever see him again?

08:51:25 18 A. No. I never saw him again, sir.

08:51:28 19 Q. Were you shown photographs of him?

08:51:31 20 A. Where?

08:51:31 21 Q. Anywhere.

08:51:32 22 A. No, sir.

08:51:38 23 Q. Would it be fair for me to put down here that you hope to be

08:51:47 24 able to give substantial assistance to the government? Would

08:51:52 25 that be a fair statement?

08:51:54 1 A. Yes.

08:51:57 2 Q. Do you face charges in Mexico?

08:52:39 3 A. Not that I know of, sir.

08:52:42 4 Q. But you know that in Mexico, you are believed to be high up

08:52:50 5 in the Zeta organization?

08:52:55 6 A. I don't know nothing, sir.

08:52:57 7 Q. Well, you're supposed to know "Cuarenta," No. "40"?

08:53:00 8 A. Yeah. But I was not part of them, sir.

08:53:04 9 Q. You work for them, but you weren't part of them?

08:53:06 10 A. I work for "Poncho" Cuellar. Mario "Poncho" Cuellar.

08:53:12 11 Q. "Poncho" Cuellar?

08:53:14 12 A. Yes, sir.

08:53:15 13 Q. And when you were in San Antonio, did representatives of the

08:53:20 14 Mexican government ever come and talk to you?

08:53:22 15 A. The Mexican government? No, sir. Never.

08:53:25 16 Q. Agents?

08:53:25 17 A. No, sir.

08:53:26 18 Q. DGR?

08:53:29 19 A. No, sir. Nobody -- nobody from Mexico come talk to me.

08:53:33 20 Q. I'm sorry?

08:53:34 21 A. Nobody from Mexico come talk to me.

08:53:38 22 Q. How did you meet Mr. Perez, your lawyer?

08:53:42 23 A. Perez?

08:53:43 24 Q. Perez.

08:53:45 25 MR. GARDNER: Your Honor, the point of relevance.

08:53:48 1 MR. DEGEURIN: I can explain at the bench, if you want
08:53:50 2 me to, without going further, but I think it's relevant.
08:53:59 3 THE COURT: I'll permit him to answer. You may answer.
08:54:04 4 A. There was a friend that got in trouble when I was in Mexico,
08:54:09 5 then Perez took him up out of jail. And when I saw my friend in
08:54:14 6 Mexico, I asked him who -- what's his lawyer and he told me it
08:54:18 7 was Mr. Perez. That's how I got the number.
08:54:22 8 Q. (BY MR. DEGEURIN) And the friend in Mexico that Mr. Perez
08:54:29 9 got out of jail, what's his name?
08:54:31 10 A. Agustin.
08:54:32 11 Q. I'm sorry?
08:54:33 12 A. Agustin.
08:54:35 13 Q. "Agua-kine"?
08:54:36 14 A. Agustin.
08:54:37 15 Q. Agustin. I'm sorry.
08:54:38 16 A. Yes, sir.
08:54:40 17 Q. My Spanish and pronunciation is not that good.
08:54:44 18 And was he in jail in the United States?
08:54:47 19 A. Yes, sir.
08:54:48 20 Q. On drug charges?
08:54:49 21 A. Money.
08:54:50 22 Q. Money?
08:54:51 23 A. Caught with money.
08:54:54 24 Q. Is he still out of jail?
08:54:56 25 A. Yes.

08:54:57 1 Q. Is he charged in the United States?

08:54:59 2 A. Not that I know, sir.

08:55:01 3 MR. GARDNER: Your Honor, at this point, relevance of
08:55:03 4 some other individual.

08:55:04 5 THE COURT: We've gone too far. I sustain the
08:55:06 6 objection. Let's move on to something else.

08:55:08 7 MR. DEGEURIN: Will the Court allow me to ask the
08:55:10 8 question -- will the prosecutor allow me to ask the question
08:55:13 9 without objection: Do you know any other people in jail with you
08:55:22 10 that are also represented --

08:55:23 11 MR. GARDNER: Your Honor, I'm going to -- object before
08:55:26 12 he finishes the question. He's talking about other people not
08:55:29 13 associated with this case.

08:55:33 14 MR. DEGEURIN: Well, I'm not sure if he'd know they're
08:55:36 15 associated or not.

08:55:37 16 THE COURT: He's indicated how he got the lawyer. I
08:55:40 17 sustain the objection on keep going on who he may know. He's got
08:55:48 18 the same lawyer.

08:55:49 19 MR. DEGEURIN: One second, Judge.

08:56:15 20 Q. (BY MR. DEGEURIN) I wanted to make sure I had this correct.
08:56:21 21 Mr. Cuellar, the person that you worked with, is he represented
08:56:25 22 by Mr. Perez, too?

08:56:28 23 MR. GARDNER: Your Honor, can we approach?

08:56:36 24 (At the bench, hearing in progress.)

08:56:47 25 MR. GARDNER: Your Honor, I'd object.

08:57:17 1 THE COURT: You don't know either if there are any
08:57:20 2 conflicts that have been made that are allowed by a federal judge
08:57:23 3 either.

08:57:25 4 MR. DEGEURIN: I don't.

08:57:26 5 THE COURT: It does seem funny that he's representing
08:57:29 6 several.

08:57:33 7 MR. DEGEURIN: My question is --

08:57:34 8 THE COURT: We do things different in San Antonio.

08:57:38 9 MR. WOMACK: Yes, sir. Another thing about that is it
08:57:40 10 seems to be he's a common denominator. He represents a number of
08:57:43 11 these defendants and they could be giving --

08:57:44 12 THE COURT: He's not on the stand giving information.

08:57:48 13 MR. DEGEURIN: I wanted to ask him a few questions
08:57:49 14 about his understanding of conflict of interest. His
08:57:53 15 understanding of whether or not advice he's given cannot harm
08:58:01 16 another witness or another client of Mr. Perez. I mean, that's
08:58:09 17 where I'm going.

08:58:10 18 THE COURT: You're going to ask him about conflict
08:58:16 19 whether or not he understands his clients could harm him by
08:58:19 20 representing somebody else?

08:58:20 21 MR. DEGEURIN: With regard to conflict of interest, I'm
08:58:23 22 going to ask him, was that explained to him, did anybody ask him
08:58:28 23 to waive the conflict of interest?

08:58:32 24 MR. WOMACK: Or that this witness gave --

08:58:33 25 MR. DEGEURIN: I'm not asking a legal conclusion. I'm

08:58:35 1 not asking what a federal judge may have done in San Antonio.

08:58:38 2 I'm asking him for his understanding.

08:58:40 3 THE COURT: I've allowed you to show who his lawyer is.

08:58:44 4 I'll allow you the question on Cuellar. That's it. We're going

08:58:48 5 to stay off of the rest of it.

08:58:50 6 MR. DEGEURIN: Okay.

08:58:51 7 THE COURT: This gentleman has got -- and, you know,

08:58:56 8 anybody reads the record will understand how non-intelligent and

08:59:00 9 unsophisticated this guy is. He's not going to -- we'll be here

08:59:06 10 forever if you try to explain conflict of interest.

08:59:09 11 MR. DEGEURIN: Okay. Finally, Judge, and I'm not

08:59:12 12 arguing with the Court, and I'm going to accept your ruling.

08:59:16 13 THE COURT: Make your bill however you wish.

08:59:19 14 MR. DEGEURIN: I'm not talking to the Court above. I'm

08:59:22 15 talking to you right now, because it may come up again. My

08:59:25 16 interest is what he believes -- his beliefs about conflict of

08:59:31 17 interest so that the jury can understand that in judging his

08:59:37 18 credibility. That's what I'm -- that's why I was going down that

08:59:41 19 road.

08:59:42 20 THE COURT: Well, he's testified as to the substance of

08:59:49 21 the allegations. You have crossed him on substance of the

08:59:53 22 allegations. But the fact that his lawyer may represent multiple

08:59:58 23 people can be excused. I don't know whether it was or not. But

09:00:03 24 this gentleman does not know.

09:00:06 25 MR. DEGEURIN: I don't know. I haven't asked him that.

09:00:10 1 MR. MAYR: And if I may, just by proxy through Mr.
09:00:13 2 DeGeurin. Can he also ask if he knows that Hector Moreno was
09:00:16 3 also represented by Frank Perez? In other words, you just said
09:00:18 4 that we could -- you just said right now that he could only
09:00:21 5 ask --

09:00:21 6 THE COURT: That's the only question before me.

09:00:24 7 MR. DEGEURIN: One second.

09:00:25 8 MR. MAYR: Sorry. Go ahead.

09:00:26 9 MR. DEGEURIN: It was my --

09:00:28 10 MR. MAYR: Go ahead. I'm sorry.

09:00:29 11 MR. DEGEURIN: I'll move on with the witness and don't
09:00:37 12 waive my interests. Judge, did you cut me off?

09:01:06 13 THE COURT: No. But don't tempt me.

09:01:11 14 MR. DEGEURIN: I'm not going to go there, Judge.

09:01:16 15 THE COURT: Go ahead, sir.

09:01:18 16 Q. (BY MR. DEGEURIN) Okay. Do you have any -- are you -- do
09:01:27 17 you know yourself of any understanding about whether or not
09:01:34 18 you're going to be sent to Mexico for prosecutions there for drug
09:01:40 19 dealings that you've done in Mexico?

09:01:42 20 A. No. I don't know about it, sir, but I'm a U.S. citizen.

09:01:47 21 Q. I'm sorry?

09:01:47 22 A. I don't know anything about that if I'm ever sent to Mexico.

09:01:50 23 Q. Okay. Have you been in jail in Mexico?

09:01:52 24 A. No, sir. Never. This is my first time in jail.

09:02:00 25 Q. Defense Exhibit No. 8, I believe it is, for demonstrative

09:02:06 1 purposes.

09:02:06 2 THE COURT: Nine.

09:02:08 3 MR. DEGEURIN: Nine. I'll offer.

09:02:10 4 MR. GARDNER: No objection, your Honor.

09:02:11 5 THE COURT: All right. Demonstrative Exhibit Colorado

09:02:15 6 9 is admitted.

09:02:18 7 MR. DEGEURIN: I'm sorry. I want to add one more thing

09:02:19 8 before I admit it. All right, Judge. I pass the witness.

09:03:05 9 MR. WOMACK: No questions, your Honor.

09:03:06 10 THE COURT: Mr. Esper.

09:03:08 11 MR. ESPER: Yes, your Honor. If it please the Court.

09:03:11 12 CROSS-EXAMINATION

09:03:11 13 BY MR. ESPER:

09:03:17 14 Q. Mr. Guadalajara, yesterday, I don't know if Mr. Womack asked

09:03:20 15 you, but are you a United States citizen?

09:03:22 16 A. Yes, sir, I am.

09:03:23 17 Q. Okay. And I believe that you were dealing in drugs in the

09:03:30 18 early 1990s, correct?

09:03:32 19 A. Yes, sir.

09:03:32 20 Q. Okay. Now, you were part of what is -- what was known as

09:03:38 21 Mr. Cuellar's crew; is that right?

09:03:40 22 A. Yes, sir.

09:03:41 23 Q. And that would consist of Mr. Cuellar, who is your boss

09:03:46 24 basically, right?

09:03:47 25 A. Yes, sir.

09:03:49 1 Q. How about Mr. Moreno?

09:03:51 2 A. No. He was part of a crew. He wasn't my boss.

09:03:55 3 Q. But he was part of the crew?

09:03:57 4 A. Yes, sir.

09:03:57 5 Q. Okay. You were part of the crew?

09:03:59 6 A. Yes, sir.

09:04:00 7 Q. Who else?

09:04:06 8 A. "Mancha" and Agustin was also part of our crew and Hector

09:04:13 9 bothers.

09:04:14 10 Q. Hector's what?

09:04:15 11 A. Brother.

09:04:17 12 Q. Brother?

09:04:17 13 A. Yes.

09:04:18 14 Q. Okay. How about his brother-in-law, Mr. Mata?

09:04:22 15 A. No, sir. I don't know who Mata is.

09:04:25 16 Q. You don't know who he is?

09:04:26 17 A. No, sir.

09:04:27 18 Q. Now, I know you haven't been sentenced yet, but when you do

09:04:36 19 get sentenced, or before you get sentenced, are you asking one or

09:04:40 20 both of the federal judges whose cases that are pending before

09:04:45 21 them to admit you into the 500-hour Comprehensive Drug Abuse

09:04:49 22 Program?

09:04:51 23 A. What is that?

09:04:52 24 Q. Well, when you were interviewed by U.S. Probation, did you

09:04:57 25 discuss with them substance abuse problems that you had?

09:05:00 1 A. Yes, sir.

09:05:01 2 Q. And you told them you had substance abuse problems, didn't

09:05:04 3 you?

09:05:05 4 A. Yes, sir.

09:05:05 5 Q. Okay. Now, what substance abuse problems did you have up to

09:05:11 6 the time that you were apprehended?

09:05:13 7 A. I was using cocaine.

09:05:15 8 Q. Cocaine?

09:05:16 9 A. Yes, sir.

09:05:16 10 Q. And how much cocaine did you use on a frequent basis?

09:05:21 11 A. Not that much, sir. I don't know. Probably about three 20s

09:05:27 12 on a weekend. Maybe more.

09:05:29 13 Q. So basically you were a weekend user of cocaine?

09:05:33 14 A. Yes, sir.

09:05:33 15 Q. And you used roughly three 20s, that might be, what, a gram

09:05:38 16 of cocaine?

09:05:38 17 A. Yes.

09:05:39 18 Q. Well, I'm asking you.

09:05:40 19 A. Yes. It is.

09:05:41 20 Q. Okay. And you did that almost every week for how many

09:05:46 21 years?

09:05:47 22 A. On weekends for six years maybe.

09:05:50 23 Q. Okay. And was it explained to you that by admitting drug

09:05:54 24 usage, you could try to get into a program with the Bureau of

09:05:59 25 Prisons to get time off your sentence?

09:06:01 1 A. Yes. It was explained that.

09:06:02 2 Q. Okay. And you're hoping to get that, aren't you?

09:06:05 3 A. Yes, sir.

09:06:06 4 Q. Okay. So you admit that during this time period that you

09:06:11 5 were dealing drugs, you were also using drugs, correct?

09:06:14 6 A. Yes, sir.

09:06:14 7 Q. All right. And the drugs that you were using was cocaine?

09:06:21 8 A. That is correct.

09:06:22 9 Q. And were you mixing it with alcohol?

09:06:23 10 A. Yes.

09:06:25 11 Q. Okay. Now, when was it -- first, let me ask you. You've

09:06:33 12 known Mr. "Chevo" Huitron, you said, from a long, long time ago,

09:06:37 13 correct?

09:06:37 14 A. Yes, sir.

09:06:38 15 Q. That would have been back in the 1990s, correct?

09:06:40 16 A. Yes, sir.

09:06:41 17 Q. And, actually, you indicated that he was a trainer for a

09:06:45 18 horse named Tio George?

09:06:47 19 A. That was his horse.

09:06:48 20 Q. That was his horse?

09:06:49 21 A. Yes, sir.

09:06:49 22 Q. And he ran that horse in Mexico, did he not?

09:06:51 23 A. Yes. In Morelos, Coahuila. He won a futurity there.

09:06:55 24 Q. And he was good at what he did, didn't he, from what you

09:06:58 25 knew?

09:06:58 1 A. From what I knew. Yes.

09:07:00 2 Q. And that's where you first met him was in the late 1990s in

09:07:03 3 Mexico, where he was racing or his horse was -- the horse that he

09:07:09 4 trained was racing in events, correct?

09:07:11 5 A. Yes, sir.

09:07:12 6 Q. Okay. Now, how many times did you see him -- did you see

09:07:16 7 him a bunch of times in the 1990s?

09:07:18 8 A. Yes, sir.

09:07:19 9 Q. Okay. Did you become friends with him or you just knew who

09:07:22 10 he was?

09:07:22 11 A. I just knew he was. I never became friends.

09:07:25 12 Q. Never talked to him?

09:07:26 13 A. Never talked to him.

09:07:27 14 Q. Okay. And how many times in the 1990s -- and I know this

09:07:31 15 might be difficult, but did you see him a bunch of times?

09:07:34 16 A. Every time that there was races there.

09:07:37 17 Q. Okay. He was always in Mexico or frequently in Mexico at

09:07:41 18 races with horses that he either owned or trained, correct?

09:07:44 19 A. Yes, sir.

09:07:46 20 Q. Okay. And are these races -- some of them are open to the

09:07:49 21 public, correct?

09:07:50 22 A. Yes.

09:07:50 23 Q. Some of them are private races, correct?

09:07:53 24 A. Yes, sir.

09:07:53 25 Q. And these private races, are they referred to as match

09:07:56 1 races?

09:07:56 2 A. Match races, yeah.

09:07:57 3 Q. Okay. Was he at some of those?

09:07:59 4 A. Yes. Sometimes there was people there.

09:08:03 5 Q. Okay. Did he ever -- did "Pancho," did he train some horses

09:08:08 6 for your boss, Mr. Cuellar?

09:08:10 7 A. Not that I knew, sir.

09:08:12 8 Q. Not that you know of?

09:08:13 9 A. No.

09:08:14 10 Q. Okay. Now, who was it that sent this supposed \$15,000 to

09:08:23 11 Mr. Huitron?

09:08:24 12 A. I sent it, sir.

09:08:25 13 Q. You sent it?

09:08:26 14 A. Yes, sir.

09:08:26 15 Q. And did Mr. Cuellar tell you to send it?

09:08:29 16 A. Yes. "Poncho" Cuellar told me, sir.

09:08:33 17 Q. And did he tell you why he was sending 15,000?

09:08:36 18 A. For horse expenses, he told me.

09:08:38 19 Q. Horse training?

09:08:39 20 A. Expenses.

09:08:40 21 Q. Horse training expenses?

09:08:41 22 A. Yes, sir.

09:08:42 23 Q. Mr. Cuellar tells you, I want you to take \$15,000 to Mr.

09:08:45 24 Huitron for horse-training expenses?

09:08:48 25 A. Yes, sir.

09:08:48 1 Q. Okay. And did he tell you where he lives?

09:08:53 2 A. He didn't told me where he lived, but I know that he have in

09:08:57 3 Austin. Because they were going to meet in Austin, my other guy.

09:08:59 4 Q. Had you ever been to his horse-training facilities in

09:09:03 5 Austin?

09:09:04 6 A. No. Never, sir.

09:09:05 7 Q. Okay. Well, how did you know where to go with this 15,000?

09:09:08 8 A. Because he give me the phone number.

09:09:11 9 Q. Oh, gave you phone number?

09:09:13 10 A. "Poncho" gave me a phone number and I gave it to the guy

09:09:16 11 that I sent over here.

09:09:17 12 Q. So you didn't take the 15,000?

09:09:18 13 A. I didn't take, no.

09:09:19 14 Q. Who's the guy that took the 15,000?

09:09:21 15 A. It's a worker for me.

09:09:22 16 Q. What's his name?

09:09:23 17 A. Rufino.

09:09:24 18 Q. Pardon me?

09:09:25 19 A. Rufino.

09:09:26 20 Q. Rubino?

09:09:27 21 A. Rufino.

09:09:28 22 Q. Can you spell that?

09:09:29 23 A. R-U-F-I-N-O.

09:09:30 24 Q. Okay. And Rufino was -- worked for you?

09:09:34 25 A. Yes, sir.

09:09:34 1 Q. And he was the guy that worked for you doing what?

09:09:39 2 A. Bringing money.

09:09:40 3 Q. Picking up money?

09:09:41 4 A. Yeah. Picking up money here in the United States and taking

09:09:44 5 it into Mexico.

09:09:47 6 Q. Okay. Did he start working for you after the seizure of

09:09:51 7 this cocaine when you fled to Mexico?

09:09:53 8 A. Yes, sir.

09:09:54 9 Q. Okay. Before that, you were the guy that was picking up

09:09:57 10 money, delivering cocaine, bringing money back to Mexico,

09:10:00 11 correct?

09:10:00 12 A. Yes, sir.

09:10:01 13 Q. But you were living in the United States?

09:10:02 14 A. Yes, sir.

09:10:03 15 Q. Where were you living?

09:10:04 16 A. San Antonio.

09:10:05 17 Q. Okay. So but you were working for Mr. Cuellar but living in

09:10:09 18 San Antonio?

09:10:10 19 A. Yes, sir.

09:10:11 20 Q. You were getting your cocaine from Mr. Cuellar, correct?

09:10:13 21 A. Yes, sir.

09:10:14 22 Q. Okay. Now, what year was it that this cocaine got seized in

09:10:19 23 Seguin, Texas that caused you to flee to Mexico?

09:10:24 24 A. I think it was 2008.

09:10:26 25 Q. Okay. And obviously somebody that had that cocaine, it was

09:10:35 1 a person that got arrested, correct?

09:10:36 2 A. Yes, sir.

09:10:37 3 Q. It was somebody that you knew?

09:10:38 4 A. No, sir. I didn't know the drivers.

09:10:42 5 Q. You didn't know the drivers?

09:10:43 6 A. No, sir.

09:10:46 7 Q. Well, what caused it -- this seizure in Seguin, Texas get --

09:10:52 8 you get wind that this cocaine has been seized. A bunch of

09:10:56 9 cocaine, right?

09:10:56 10 A. Yes, sir.

09:10:57 11 Q. Is it your cocaine?

09:10:58 12 A. No, sir.

09:10:59 13 Q. The driver's not your driver?

09:11:01 14 A. No, sir.

09:11:01 15 Q. The vehicle, does it belong to you?

09:11:03 16 A. No, sir.

09:11:03 17 Q. Why do you flee to Mexico?

09:11:05 18 A. Because the guy that I hired to hire the drivers, he got

09:11:09 19 arrested.

09:11:10 20 Q. The guy that hired the drivers got arrested, also?

09:11:13 21 A. Yes, sir.

09:11:14 22 Q. And you hired the guy that hired the drivers?

09:11:17 23 A. Yes, sir.

09:11:18 24 Q. So you were concerned that the guy who hired the drivers was

09:11:23 25 going to say things about you?

09:11:25 1 A. Yes, sir.

09:11:25 2 Q. What was that guy's name?

09:11:32 3 A. Jose -- can't remember his last name, sir.

09:11:36 4 Q. You just know him as Jose?

09:11:38 5 A. Yes, sir.

09:11:38 6 Q. Had you hired him on a number of occasions to drive loads of

09:11:42 7 cocaine?

09:11:42 8 A. He only did that three or four loads of cocaine.

09:11:45 9 Q. Okay. And not only was he arrested but so was the driver,

09:11:51 10 correct?

09:11:51 11 A. Yes, sir.

09:11:51 12 Q. Okay. Did they reach out to you and ask you for help with

09:11:56 13 bond or lawyer's fees?

09:11:58 14 A. Nah. They never told me anything.

09:12:00 15 Q. Okay. You just found out this load got busted and you just

09:12:03 16 packed your bags, went to Mexico?

09:12:05 17 A. Yes.

09:12:05 18 Q. Okay. And you had a house here, did you not?

09:12:08 19 A. No, sir.

09:12:09 20 Q. I thought you said you lived in San Antonio?

09:12:11 21 A. I live in San Antonio with my mom and dad.

09:12:12 22 Q. You were renting?

09:12:14 23 A. I live with my mom and dad.

09:12:15 24 Q. Okay. So you were living with your parents?

09:12:17 25 A. Yes, sir.

09:12:17 1 Q. Okay. And obviously they didn't know you were dealing
09:12:24 2 cocaine, did they?

09:12:25 3 A. No, sir.

09:12:27 4 Q. And you were pretty good about hiding that from your mom and
09:12:30 5 dad, correct?

09:12:30 6 A. Yes, sir.

09:12:31 7 Q. All right. Now, you then go to Mexico in 2008, right?

09:12:36 8 A. Yes, sir.

09:12:37 9 Q. Okay. And you're living where, in Piedras Negras?

09:12:42 10 A. Piedras Negras in Nava.

09:12:45 11 Q. Okay. What year is it that this \$15,000 is supposedly sent
09:12:50 12 to Mr. "Chevo" Huitron for horse expenses?

09:12:53 13 A. 2010, sir.

09:12:55 14 Q. Okay. And obviously, he didn't come to Mexico to get that
09:13:01 15 money, did he?

09:13:02 16 A. No, sir.

09:13:02 17 Q. Okay. And it was "Poncho" Cuellar who told you, have this
09:13:10 18 money sent to Mr. Huitron for payment of horse expenses?

09:13:13 19 A. Yes, sir.

09:13:15 20 Q. Now, according to you, this driver when he makes the
09:13:21 21 delivery supposedly cracks a joke and says, where are the kilos?

09:13:25 22 A. Yes, sir.

09:13:25 23 Q. Okay. And apparently Mr. Huitron took offense at that?

09:13:29 24 A. Yes, sir. He got mad.

09:13:31 25 Q. Okay. You were there, though?

09:13:32 1 A. No, sir.

09:13:33 2 Q. Okay. Now, apparently when the driver gets back to Mexico,

09:13:38 3 Mr. Cuellar reprimands him for making that comment, correct?

09:13:43 4 A. The driver called me and he said that Huitron got mad at --

09:13:49 5 Cuellar called me that said that "40" called him to ask him why

09:13:52 6 was his driver asking for kilos.

09:13:53 7 Q. Okay. Wait a minute. The driver calls you and tells you

09:13:57 8 about the little wisecrack he made to Mr. Huitron and that

09:14:02 9 "Chevo" got mad at him?

09:14:03 10 A. Yes, sir.

09:14:03 11 Q. Okay. And you then tell Mr. Cuellar?

09:14:08 12 A. By that time, Cuellar had already called me and told me

09:14:10 13 about it.

09:14:11 14 Q. Pardon me?

09:14:11 15 A. By that time, Cuellar had already told me about it.

09:14:14 16 Q. Okay. Cuellar told you about it?

09:14:16 17 A. Yes.

09:14:16 18 Q. And Cuellar told you supposedly that "40" had already called

09:14:21 19 him and said, why is this guy making these wisecracks?

09:14:25 20 A. Yes, sir.

09:14:25 21 Q. Okay. You don't know who called "40," do you?

09:14:28 22 A. No, sir.

09:14:29 23 Q. You weren't there?

09:14:30 24 A. No, sir. I wasn't there.

09:14:31 25 Q. And you don't know who was present whenever this \$15,000 was

09:14:34 1 brought to Mr. Huitron and this wisecrack was made to him, do
09:14:38 2 you?

09:14:38 3 A. He told me it was Huitron that was there.

09:14:41 4 Q. Just "Chevo"?

09:14:41 5 A. Yes, sir.

09:14:42 6 Q. By himself?

09:14:43 7 A. "Chevo."

09:14:43 8 Q. But you didn't know who "Chevo" called to call "40," do you?

09:14:47 9 A. No, sir. I don't know.

09:14:48 10 Q. All right. Did -- you've never told Mr. Huitron you're a
09:14:56 11 cocaine dealer, are you?

09:14:57 12 A. No, sir.

09:14:57 13 Q. Okay. And neither has Mr. Cuellar, has he, to your
09:15:02 14 knowledge?

09:15:02 15 A. Mr. Cuellar what?

09:15:03 16 Q. And to your knowledge, Mr. Cuellar has never told "Chevo,"
09:15:06 17 I'm a cocaine dealer?

09:15:08 18 A. No, sir.

09:15:09 19 Q. Okay. And this driver that was taking these moneys to your
09:15:14 20 knowledge -- or you didn't instruct him to tell "Chevo," these
09:15:19 21 moneys are from drugs. You know that?

09:15:20 22 A. I didn't instruct him, sir.

09:15:22 23 Q. Right. You tried to keep that hidden, didn't you?

09:15:25 24 A. Yes, sir.

09:15:25 25 Q. Sure.

09:15:26 1 A. Well, they knew.

09:15:27 2 Q. I'm not talking about what they knew, sir. If you didn't

09:15:31 3 tell them, you're just guessing that they knew. Isn't that

09:15:34 4 right?

09:15:34 5 A. Yes, sir.

09:15:36 6 Q. Yeah. That's what I thought.

09:15:38 7 Now, when you met a year and a half ago with this

09:15:44 8 gentleman, Mr. Lawson, you met somewhere in some building,

09:15:49 9 correct?

09:15:49 10 A. Yes, sir.

09:15:49 11 Q. And he interviewed you?

09:15:51 12 A. Yes, sir.

09:15:51 13 Q. Okay. And there was someone else with him, a female FBI

09:15:54 14 agent who was probably taking notes, correct?

09:15:56 15 A. Yes, sir.

09:15:57 16 Q. And he's asking you questions, correct?

09:15:59 17 A. Yes, sir.

09:15:59 18 Q. And he's asking you to be truthful with him and tell him

09:16:02 19 everything you know about this horse racing and interweaving with

09:16:09 20 alleged drug dealing, correct?

09:16:10 21 A. Yes, sir.

09:16:11 22 Q. All right. Now, have you seen -- I realize it was a year

09:16:16 23 and a half ago. Have you met with him or any other agents about

09:16:21 24 this -- about testimony in this case?

09:16:24 25 A. No, sir.

09:16:25 1 Q. Not talked to anybody since a year and a half ago?

09:16:28 2 A. Yes, sir. Nobody.

09:16:29 3 Q. Okay. Now, did you tell Mr. Lawson --

09:16:36 4 MR. GARDNER: Your Honor, may I have a moment to confer

09:16:39 5 with counsel?

09:16:45 6 Q. (BY MR. ESPER) You didn't meet with any agents, but you

09:16:48 7 spoke with Mr. Gardner, correct?

09:16:49 8 A. Yes, sir.

09:16:50 9 Q. Concerning your testimony that you're giving here today?

09:16:52 10 A. Yes, sir.

09:16:52 11 Q. And he basically was just not telling you what to say but

09:16:56 12 basically going --

09:16:57 13 A. What I say.

09:16:59 14 Q. Kind of rehearsing a little bit, right?

09:17:01 15 A. Yes, sir.

09:17:01 16 Q. Okay. Did you ever tell Mr. Lawson about this \$15,000 that

09:17:08 17 was supposedly sent to Mr. "Chevo" Huitron?

09:17:11 18 A. I told him that.

09:17:12 19 Q. You did?

09:17:12 20 A. Yes, sir.

09:17:13 21 Q. Did you tell him about the wisecrack that your driver made

09:17:19 22 to "Chevo" Huitron about the kilos of cocaine?

09:17:22 23 A. Yes, sir.

09:17:22 24 Q. And did you tell him that the driver got reprimanded by,

09:17:29 25 allegedly, Mr. -- what Mr. "40" calling Mr. Cuellar to reprimand

09:17:34 1 this guy for this?

09:17:35 2 A. Yes, sir.

09:17:35 3 Q. You told him that?

09:17:36 4 A. Yes, sir.

09:17:36 5 Q. And you believe -- well --

09:17:42 6 MR. DEGEURIN: Your Honor, may I -- I'm sorry. Mr.

09:17:44 7 Esper, may I approach, please, with all lawyers?

09:17:52 8 THE COURT: Sure.

09:17:58 9 (At the bench, on the record.)

09:18:11 10 MR. DEGEURIN: We are in a Bruton situation where a
09:18:18 11 lawyer representing his own client is asking about confessions
09:18:26 12 and statements made by this person to either the prosecutor or to
09:18:26 13 the agents that would be after arrest and not part of the
09:18:32 14 conspiracy covered or session. And I don't want to waive my
09:18:36 15 right to object to hearsay statements that are not coconspirator
09:18:41 16 statements. Therefore, I object. I don't want to make a
09:18:53 17 speaking objection before the jury.

09:18:54 18 THE COURT: Well, I'm not going to tolerate every
09:18:56 19 objection, y'all approaching the bench. The jury's had all of
09:19:00 20 the approaching the bench they want. They don't know what you're
09:19:03 21 saying. But it doesn't do your client any good when you want to
09:19:05 22 approach the bench. And I can't control the lawyers. I did my
09:19:12 23 best a couple of days ago. I'm not going to do it. If he wants
09:19:17 24 to ask him what he said, then you can ask him what he said, too.

09:19:19 25 MR. DEGEURIN: Okay. I'm going to object on the record

09:19:23 1 now before the jury.

09:19:24 2 THE COURT: Yes, sir. Any time you wish, you can. You
09:19:28 3 have that right.

09:19:28 4 MR. DEGEURIN: Okay. Your Honor, I want to object in
09:19:42 5 front of the jury our discussions. I object to Bruton material,
09:19:50 6 statements made that are not part of the exception to the hearsay
09:19:54 7 rule being asked or about any lawyer, or any prosecutor, or any
09:19:58 8 other lawyer. I object to that being inadmissible against my
09:20:04 9 particular client. And I would ask for an instruction to the
09:20:06 10 jury as to how they would receive such testimony.

09:20:11 11 THE COURT: Well, I don't have a question before me.
09:20:14 12 So if there is a question that you believe needs that objection,
09:20:21 13 you make it. The only question I have before me is a "Yes" or
09:20:28 14 "No" answer. So we'll go to the next question by Mr. Esper.

09:20:32 15 But you make the objection anytime you wish. That's
09:20:35 16 your privilege and obligation.

09:20:37 17 MR. DEGEURIN: The concern is that evidence is not
09:20:41 18 relevant to my client might be believed or thought to be
09:20:49 19 admissible against my client by the jury.

09:20:50 20 THE COURT: I'm going to give you plenty of time to
09:20:52 21 argue your case. Just make your objections when they're timely.

09:20:58 22 All right. Mr. Esper. Your next question.

09:21:01 23 Q. (BY MR. ESPER) Thank you. Yes, your Honor.

09:21:02 24 And whenever you're being interviewed by Mr. Lawson and
09:21:06 25 there's notes being taken, you supposedly told him these things

09:21:11 1 that you're testifying to about Mr. "Chevo" Huitron, correct?

09:21:14 2 A. Yes, sir.

09:21:15 3 Q. Now, have you been shown or would it surprise you -- let me

09:21:21 4 ask you this. Have you been shown any report that Mr. Lawson

09:21:24 5 drew up reflecting what you supposedly told him?

09:21:28 6 A. No, sir.

09:21:33 7 MR. GARDNER: Your Honor, this part of the objection is

09:21:35 8 improper impeachment. Mr. Esper is going to show him Special

09:21:38 9 Agent Lawson --

09:21:39 10 THE COURT: I know what he's going to do. I'm going to

09:21:40 11 put the jury in the jury box -- in the jury deliberation room.

09:22:18 12 (Jury not present.)

09:22:30 13 THE COURT: Now, first, ladies and gentlemen out there

09:22:42 14 in the audience, I'm not going to have any more cellphones go

09:22:46 15 off. If your cellphone goes off, I'm instructing the marshal to

09:22:49 16 confiscate it. You can get it back in a month by going to the

09:22:56 17 United States Marshal's Office. But I'm telling you to take any

09:22:59 18 cellphone that goes off again. Okay. That's instruction one.

09:23:05 19 Instruction two is to the lawyers. You inquire as to

09:23:17 20 the conversations and the report of the agent. I will allow the

09:23:21 21 agent not only to tell them that this -- he was not interrogating

09:23:25 22 him for this case, which he wasn't a long time ago. I will also

09:23:31 23 allow him to tell everything he said. I will give the

09:23:36 24 instruction, as requested by Mr. DeGeurin, that they could only

09:23:40 25 consider this testimony regarding your client.

09:23:49 1 Now, you're taking a report and you're going to try to
09:23:52 2 cross on what is not there, correct?

09:23:57 3 MR. ESPER: Your Honor, that is correct.

09:23:58 4 THE COURT: All right.

09:23:58 5 MR. ESPER: If I may respond, your Honor.

09:24:00 6 THE COURT: Yeah.

09:24:00 7 MR. ESPER: I know this is not --

09:24:01 8 THE COURT: You respond when it's your turn. I happen

09:24:06 9 to be talking right now.

09:24:07 10 MR. ESPER: I'm sorry.

09:24:08 11 THE COURT: All right. Now, that can be done, but it

09:24:14 12 has a penalty. And the other lawyers may be ready to make a

09:24:20 13 Bruton objection, but they can't make it right now because this

09:24:30 14 witness is available for cross-examination. Now, I've told you

09:24:37 15 what I'm going to do. If you get into why it wasn't there and

09:24:41 16 what was said, I'm going to allow the gentleman whose report it

09:24:47 17 is to respond to it. I'll take a five-minute break. You decide

09:24:54 18 how you wish to proceed.

09:30:42 19 (Recess.)

09:34:20 20 MR. ESPER: Your Honor, before the jury comes in, I am

09:34:23 21 going to withdraw the question in light of the Court's comments.

09:34:26 22 THE COURT: Hold on. You may be seated. Excuse me.

09:34:29 23 MR. ESPER: What I anticipate the Court's ruling is.

09:34:31 24 But I would, before they come in, like to make a record, just to

09:34:35 25 ask him for purposes --

09:34:37 1 THE COURT: I'll let you make a record at a later date.

09:34:40 2 I'm not going to keep the jury waiting any longer.

09:34:42 3 MR. ESPER: It will take me one second, your Honor.

09:34:44 4 THE COURT: Well, it may or may not.

09:34:46 5 MR. ESPER: Okay. All right.

09:34:47 6 THE COURT: And other people may wish to participate.

09:34:50 7 And I don't want the witness any more confused than he is

09:34:58 8 already.

09:34:59 9 Bring the jury in.

09:35:03 10 (Jury present.)

09:36:56 11 THE COURT: Mr. Esper, you may continue, sir.

09:36:59 12 MR. ESPER: Thank you.

09:36:59 13 Q. (BY MR. ESPER) Mr. Guadalajara, you said that you knew of a

09:37:05 14 horse called Tempting Dash?

09:37:07 15 A. Yes, sir.

09:37:07 16 Q. And what was the name of that horse when it was in Mexico?

09:37:11 17 A. El Hueso.

09:37:14 18 Q. El Hueso. Can you spell?

09:37:16 19 A. H-U-E-S-O.

09:37:17 20 Q. H-U-E-S-O?

09:37:19 21 A. Yes, sir.

09:37:19 22 Q. Okay. And you said that the person that trained that horse

09:37:24 23 was a person name Pedro?

09:37:25 24 A. "Pedrito." Yes, sir.

09:37:26 25 Q. Okay. And do you know who trained that horse when he came

09:37:30 1 to the United States?

09:37:31 2 A. Yes, sir.

09:37:32 3 Q. Who's that?

09:37:32 4 A. "Chevo."

09:37:33 5 Q. "Chevo" Huitron, correct?

09:37:34 6 A. Yes, sir.

09:37:35 7 Q. Okay. And do you know when that horse -- and if you don't,

09:37:40 8 simply say so -- when that horse was brought to the United

09:37:42 9 States?

09:37:42 10 A. No. I don't know, sir.

09:37:44 11 Q. Okay. And do you know -- and if you don't, simply say so --

09:37:49 12 whether Mr. Cuellar paid moneys for the horse expenses in

09:37:54 13 training that horse?

09:37:55 14 A. Yes, he did.

09:37:56 15 Q. He did?

09:37:56 16 A. Yes, sir.

09:37:56 17 Q. Okay. And is that because he told you?

09:37:59 18 A. Yes, sir.

09:38:00 19 Q. Okay. Did you ever see that horse race in the United

09:38:07 20 States?

09:38:07 21 A. Only on TV, sir.

09:38:08 22 Q. Just on TV?

09:38:09 23 A. Yes.

09:38:09 24 Q. Okay. May I have just a moment, your Honor?

09:38:17 25 THE COURT: Certainly.

09:38:21 1 Q. (BY MR. ESPER) When you were in the drug business, Mr.
09:38:25 2 Guadalajara, you were trying, of course, with people that you
09:38:30 3 weren't dealing drugs with to try to camouflage and hide the fact
09:38:34 4 that you were a drug dealer, correct?
09:38:36 5 A. Yes, sir.
09:38:37 6 Q. And that dealt with everybody who you came in contact with
09:38:41 7 except those you were dealing drugs with, correct?
09:38:43 8 A. Yes, sir.
09:38:45 9 Q. You didn't want it out in the open that moneys that you were
09:38:48 10 spending in the United States came from drug moneys, did you?
09:38:52 11 A. No, sir.
09:38:54 12 Q. And I believe you testified that you spent a lot of money
09:39:00 13 that you made on a house here in San Antonio?
09:39:03 14 A. It was in Mexico, sir.
09:39:05 15 Q. Pardon?
09:39:05 16 A. In Mexico. Not here.
09:39:07 17 Q. In Mexico?
09:39:07 18 A. Yes, sir.
09:39:08 19 Q. Okay. But when you were living here, you were living with
09:39:11 20 your parents, and you were spending a lot of money that you were
09:39:15 21 making from the drug business?
09:39:17 22 A. I didn't spend a lot of money here in the United States.
09:39:20 23 Most of my money, I spent it in Mexico.
09:39:21 24 Q. You spent it mostly in Mexico?
09:39:23 25 A. Yes, sir.

09:39:23 1 Q. Even though you lived in San Antonio?

09:39:24 2 A. Yes, sir.

09:39:25 3 Q. That's all I have, your Honor.

09:39:28 4 MR. MAYR: Just briefly, your Honor.

09:39:30 5 CROSS-EXAMINATION

09:39:31 6 BY MR. MAYR:

09:39:31 7 Q. Mr. Guadalajara, do you know "Chevo" Huitron's brother

09:39:35 8 Isabel?

09:39:35 9 A. "La Quiria"? That's his nickname? I think I know him. "La

09:39:39 10 Quiria," that's his -- that's how I know him by.

09:39:42 11 Q. How do you know him?

09:39:43 12 A. When they were up there in Mexico racing.

09:39:44 13 Q. So he races horses, also?

09:39:46 14 A. Yes, sir.

09:39:47 15 Q. What else do you know about him?

09:39:48 16 A. That's all I know, sir.

09:39:49 17 Q. Okay. Do you know he's here in the courtroom?

09:39:52 18 A. No, sir.

09:39:52 19 Q. Okay. What about his brother Jesus, do you know him?

09:39:54 20 A. No, sir.

09:39:56 21 Q. No further questions.

09:40:02 22 THE COURT: Any redirect?

09:40:03 23 MR. GARDNER: Yes, your Honor. Thank you.

09:40:03 24

09:40:05 25

RE-DIRECT EXAMINATION

09:40:05 1 BY MR. GARDNER:

09:40:14 3 Q. Mr. DeGeurin, could I have Colorado 9, please?

09:40:17 4 Mr. Guadalajara, you remember when Mr. DeGeurin asked

09:40:32 5 you if you saw a person you were told was "Pancho" across a race

09:40:35 6 track in early 2010?

09:40:36 7 A. Yes, sir.

09:40:37 8 Q. Do you recall the statement that Mr. DeGeurin asked you, was

09:40:40 9 that a fair statement of your testimony?

09:40:42 10 A. Yes, sir.

09:40:43 11 Q. Okay. Would it also be a fair statement of your testimony

09:40:45 12 if I were to add this: "Pancho" is the same person you see today

09:40:50 13 and pointed out yesterday?

09:40:51 14 A. Yes, sir.

09:41:03 15 Q. And Mr. Finn asked you about the statement regarding Jose

09:41:17 16 Trevino being a bricklayer. Do you recall that?

09:41:19 17 A. Yes, sir.

09:41:19 18 Q. All right. You speak a little fast, Mr. Guadalajara. Could

09:41:23 19 you slow down and repeat exactly what "40" told you about Jose

09:41:27 20 Trevino when you were watching the Mr. Piloto race?

09:41:32 21 A. He said that his brother, after waking every day at 5:00 in

09:41:36 22 the morning to go to work, never imagine himself at the horse

09:41:40 23 business. And he was telling that to "42." And "42" would turn

09:41:45 24 around and he just laughed, he said like we made it for him.

09:41:50 25 Q. We made it for him?

09:41:51 1 A. Yes, sir.

09:41:51 2 Q. Whose horse was Mr. Piloto?

09:41:54 3 A. "40."

09:41:56 4 Q. And did Jose Trevino manage those horses for his brother?

09:42:01 5 A. Yes, he did, sir.

09:42:06 6 Q. Now, both Mr. Finn and Mr. Esper asked you about your

09:42:12 7 criminal record and this is your first conviction, correct?

09:42:15 8 A. Yes, sir.

09:42:15 9 Q. You had no convictions prior to your pleading guilty in this

09:42:20 10 federal case?

09:42:20 11 A. Yes, sir.

09:42:21 12 Q. Were you conducting any illegal activities at that time?

09:42:26 13 A. After I got arrested?

09:42:27 14 Q. No. Before you got arrested?

09:42:28 15 A. Yes, sir.

09:42:29 16 Q. Okay. Were those out in the open or were you trying to hide

09:42:33 17 that from law enforcement?

09:42:33 18 A. I was just trying to hide it.

09:42:37 19 Q. Now, could you tell the jury, again, when you worked with

09:42:45 20 Mr. Cuellar, when you started working with "Poncho" Cuellar?

09:42:50 21 A. Oh, 1993.

09:42:52 22 Q. And when you did that, did you two sign a piece of paper

09:42:55 23 that said you would work for him?

09:42:56 24 A. No, sir.

09:42:57 25 Q. Did you know all the details of what Mr. Cuellar would do?

09:43:01 1 A. No, sir.

09:43:01 2 Q. And I believe you said you didn't know Mr. Mata?

09:43:04 3 A. Mr. who?

09:43:05 4 Q. Mr. Mata. I believe Mr. Esper asked you if you know Mr.

09:43:10 5 Mata?

09:43:10 6 A. Oh, no, I didn't know him, sir.

09:43:11 7 Q. Did you know all the people who worked with "Poncho"

09:43:14 8 Cuellar?

09:43:15 9 A. Not everybody. Just who was there.

09:43:17 10 Q. And did you know all the inner workings or the details of

09:43:24 11 how the cocaine was moved from somewhere south of Mexico into the

09:43:28 12 United States?

09:43:28 13 A. Not everything, sir.

09:43:30 14 Q. Now, in these interviews that you conducted with Special

09:43:41 15 Agent Lawson over here, did you answer the questions that he

09:43:44 16 asked you?

09:43:45 17 A. Yes, sir.

09:43:47 18 Q. And is that what you're doing today, responding to questions

09:43:50 19 that are asked of you?

09:43:51 20 A. Yes, sir.

09:43:52 21 Q. Now, when you first met, according to Mr. Esper, you first

09:43:58 22 met "Chevo" Huitron in the '90s in Mexico, correct?

09:44:02 23 A. Yes, sir.

09:44:02 24 Q. Okay. And what was he doing down there again?

09:44:04 25 A. They were racing his horse in Morelos, Coahuila.

09:44:08 1 Q. Did you observe him talking to a number of people and making
09:44:11 2 contacts in Mexico?

09:44:12 3 A. He talked to a bunch of people down there.

09:44:15 4 Q. And I believe Mr. Esper asked you if "Chevo" Huitron was a,
09:44:20 5 quote, good trainer.

09:44:21 6 A. Yes.

09:44:22 7 Q. Did "40" use "Chevo" Huitron because he was a good trainer?

09:44:26 8 A. Yes, sir.

09:44:27 9 Q. He also asked you if you were high up in the organization,
09:44:35 10 and I believe your response was no.

09:44:37 11 A. No, sir.

09:44:39 12 Q. Do you know what "Chevo's" role was in the organization?

09:44:43 13 A. No, sir. Just he trained the horse for "40." That's all I
09:44:48 14 knew.

09:44:48 15 Q. Just trained horses for "40"?

09:44:49 16 A. Yes, sir.

09:44:49 17 Q. And do you know what Jose Trevino's role was in the
09:44:52 18 organization?

09:44:53 19 A. No, sir. All I knew is he was "40" brother, and he's the
09:44:58 20 one that managed the horses down here.

09:45:00 21 Q. Horses in the United States?

09:45:00 22 A. Yes, sir. In the United States.

09:45:02 23 Q. Okay. Were you aware of "Pancho" Colorado's role in the
09:45:05 24 organization?

09:45:06 25 A. No, sir.

09:45:09 1 Q. How many times have you gone up to people and said, hey, I'm
09:45:12 2 a drug dealer?

09:45:13 3 A. Never, sir.

09:45:15 4 Q. And why not?

09:45:16 5 A. Because I don't want nobody to know that.

09:45:20 6 Q. And I believe Mr. Esper asked you if you were good at
09:45:22 7 concealing your activities from your parents.

09:45:24 8 A. Yes, sir.

09:45:26 9 Q. And I want to get the timing right on this call that you
09:45:32 10 received from "Poncho" Cuellar. How soon after your driver
09:45:38 11 called you about the joke did you get a call from "Poncho"
09:45:43 12 Cuellar?

09:45:44 13 A. About 30 minutes, sir.

09:45:46 14 Q. And did "Poncho" Cuellar specifically mention "40's" name?

09:45:54 15 A. Yes, sir.

09:45:55 16 Q. And can you tell the ladies and gentlemen of the jury what
09:45:58 17 "Poncho" Cuellar relayed to you, the best of your memory?

09:46:01 18 A. That he what?

09:46:04 19 Q. Please tell the jury what "Poncho" Cuellar relayed to you
09:46:06 20 about what "40" said.

09:46:08 21 A. Oh, he said that he was asking him for kilos there and to
09:46:16 22 bring up the driver to him so they can beat him up.

09:46:19 23 Q. Who wanted to beat up the driver?

09:46:21 24 A. "40."

09:46:23 25 Q. Did the driver eventually get beat up?

09:46:26 1 A. No, sir, because "Poncho" Cuellar tell him that he was a new
09:46:29 2 guy, he was just joking.

09:46:31 3 Q. That's all I have, your Honor.

09:46:34 4 RE-CROSS EXAMINATION

09:46:34 5 BY MR. FINN:

09:46:40 6 Q. May it please the Court. Thank you, Judge.

09:46:43 7 Mr. Guadalajara, I just have a couple of questions for
09:46:47 8 you. As to what you told this jury that "40" allegedly said, I
09:46:51 9 want you to stand up, look around the courtroom and see if you
09:46:54 10 see him anywhere in the courtroom. Would you?

09:47:00 11 A. No, sir.

09:47:00 12 Q. "40's" not here, is he?

09:47:02 13 A. No, sir.

09:47:03 14 Q. I can't question him, can I?

09:47:04 15 A. No, sir.

09:47:05 16 Q. So what you're telling this jury, although it's admissible,
09:47:08 17 it's called hearsay, correct?

09:47:09 18 MR. GARDNER: Your Honor, I'm going to object to this
09:47:11 19 line of questioning. It's improper.

09:47:14 20 THE COURT: It's not a question yet. Let's ask
09:47:15 21 questions.

09:47:16 22 Q. (BY MR. FINN) How many hundreds of thousands of kilos do you
09:47:21 23 think you would have brought into the country from the date that
09:47:24 24 you were arrested until today if you had not been arrested?

09:47:29 25 A. I have no idea, sir. That depends on whether they give us

09:47:33 1 work or not.

09:47:33 2 Q. But you had no intention of getting out of the dope-running

09:47:37 3 business until you got arrested, right?

09:47:39 4 A. Yes, sir.

09:47:40 5 Q. Thank you. That's all, your Honor.

09:47:43 6 MR. DEGEURIN: No questions, your Honor.

09:47:44 7 THE COURT: Mr. Womack.

09:47:45 8 MR. WOMACK: No. No questions.

09:47:46 9 THE COURT: Mr. Esper.

09:47:48 10 RE-CROSS EXAMINATION

09:47:48 11 BY MR. ESPER:

09:47:49 12 Q. Mr. Guadalajara, what you -- you never met "Chevo" Huitron,

09:47:55 13 correct?

09:47:55 14 A. Only on races in Mexico is where I saw him. I never met

09:47:58 15 him, sir.

09:47:58 16 Q. Just saw him?

09:48:00 17 A. Yes, sir.

09:48:00 18 Q. And whatever you're telling the ladies and gentlemen of this

09:48:03 19 jury about him came from "Poncho" Cuellar, correct?

09:48:06 20 A. Yes, sir.

09:48:06 21 Q. Okay. Miguel "Cuarenta" never told you anything about Mr.

09:48:13 22 "Chevo" Huitron, did he?

09:48:14 23 A. He said he was a trainer of the horses, sir.

09:48:16 24 Q. He told you --

09:48:17 25 A. Tempting Dash, yes, when we were watching the races.

09:48:19 1 Q. Okay. He said, that's the guy who trains some of my horses?

09:48:23 2 A. Yes, sir.

09:48:23 3 Q. That's all I have.

09:48:26 4 MR. MAYR: I have no further question, your Honor.

09:48:28 5 MR. GARDNER: May the witness be excused, your Honor?

09:48:30 6 MR. FINN: No objection.

09:48:31 7 THE COURT: You may excuse him for the time being. You

09:48:47 8 may call your next witness.

09:48:48 9 MR. GARDNER: Thank you, your Honor. Government calls

09:48:50 10 Special Agent Rene Amarillas.

09:49:27 11 (Witness sworn.)

09:49:48 12 THE COURT: If you'll tell us, please, sir, your full

09:49:50 13 name and spell your last.

09:49:51 14 THE WITNESS: My name is Rene Amarillas. My last name

09:49:56 15 spelled, A-M-A-R-I-L-L-A-S.

09:50:02 16 RENE AMARILLAS, called by the Government, duly sworn.

09:50:02 17 DIRECT EXAMINATION

09:50:02 18 BY MR. GARDNER:

09:50:03 19 Q. Thank you, your Honor.

09:50:04 20 Good morning, Special Agent. Could you please

09:50:07 21 introduce yourself to the jury? Tell them what you do for a

09:50:09 22 living.

09:50:10 23 A. Yes, sir. My name is Special Agent Rene Amarillas. I'm

09:50:15 24 group supervisor of the Drug Enforcement Administration,

09:50:18 25 currently stationed in Tucson, Arizona.

09:50:21 1 Q. And how long have you been in Tucson, Arizona?

09:50:24 2 A. I've been in Tucson, Arizona since March of 2011.

09:50:28 3 Q. And how long have you been with the Drug Enforcement

09:50:31 4 Administration?

09:50:31 5 A. Since January of 2000.

09:50:34 6 Q. And have you spent some time operating for the Drug

09:50:39 7 Enforcement Administration in Mexico?

09:50:41 8 A. Yes, sir. I have.

09:50:42 9 Q. Okay. Could you explain that to the jury, please?

09:50:45 10 A. In January or, rather, February of 2007, I was assigned to

09:50:51 11 the Monterrey, Nuevo Leon office in Monterrey, Mexico. Assigned

09:50:58 12 there as a special agent, specifically to the U.S. consulate

09:51:02 13 there.

09:51:03 14 Q. And what was your role while you were special agent in

09:51:06 15 Mexico for the U.S. law enforcement?

09:51:09 16 A. My role was to further investigations specific to Mexico

09:51:16 17 with the time there, and assist the domestic offices. But I also

09:51:23 18 carry on our own investigations there while stationed in Mexico.

09:51:27 19 Q. At some point, did you become aware of the Los Zetas cartel?

09:51:31 20 A. Yes, sir. I did.

09:51:32 21 Q. Okay. And did you begin investigating them?

09:51:35 22 A. Yes, sir. I did.

09:51:36 23 Q. And who was the target -- big target of your investigation?

09:51:41 24 A. The big target of our investigation was the hierarchy at Los

09:51:46 25 Zetas that included Heriberto Lazcano-Lazcano, Miguel

09:51:51 1 Trevino-Morales and Omar Trevino-Morales, amongst others.

09:51:54 2 Q. And we've heard a little bit about Heriberto

09:51:59 3 Lazcano-Lazcano, but at the time, can you tell the jury what his

09:52:02 4 role was in the Zetas organization?

09:52:04 5 A. At the time, he was the leader of the Zeta organization.

09:52:10 6 Q. Okay. And, sir, did you become aware of an individual named

09:52:15 7 Ramiro Villarreal?

09:52:15 8 A. Yes, sir. I did.

09:52:21 9 Q. I'm showing you Government's Exhibit 419. Do you recognize

09:52:25 10 that, sir?

09:52:25 11 A. Yes, sir, I do.

09:52:26 12 Q. Is that Mr. Villarreal?

09:52:28 13 A. Yes, sir, it.

09:52:29 14 Q. Your Honor, we offer Government's Exhibit 419.

09:52:38 15 THE COURT: It's received.

09:52:54 16 Q. (BY MR. GARDNER) And, again, for the jury, Mr. Amarillas,

09:52:59 17 there is Mr. Villarreal, right?

09:53:00 18 A. His name was Jose Romero Villarreal.

09:53:05 19 Q. How did Mr. Villarreal come to your attention?

09:53:07 20 A. On or about 2008, I had had a source of information of a

09:53:11 21 person that was providing information to me that stated that this

09:53:15 22 individual here --

09:53:17 23 MS. WILLIAMS: Objection. Hearsay.

09:53:18 24 THE COURT: Sustain the objection.

09:53:20 25 Q. (BY MR. GARDNER) Did you receive information about Mr.

09:53:22 1 Villarreal?

09:53:22 2 A. Yes, I did.

09:53:23 3 Q. Okay. And based on that information, what steps did you

09:53:26 4 take?

09:53:27 5 A. I took the steps of further -- of getting the information

09:53:31 6 and moving forward to positively identify who this person was.

09:53:35 7 Q. And what steps were those, sir?

09:53:37 8 A. The steps were to look into databases and indices that were

09:53:43 9 available specific to me and to others, and to corroborate first

09:53:48 10 and last name, and then, finally, I was able to ascertain a

09:53:53 11 photograph of him, showed it specific to a person that was

09:53:58 12 providing information to me to get a positive identification on

09:54:01 13 him.

09:54:02 14 Q. And so, the photograph you obtained, you corroborated that

09:54:06 15 to be, in fact, Mr. Villarreal here on the screen?

09:54:09 16 A. Yes, sir.

09:54:10 17 Q. So once you corroborated Mr. Villarreal's identify, what

09:54:13 18 further investigative steps did you take?

09:54:17 19 A. Along that time, I was also provided with a Nextel

09:54:23 20 push-to-talk number that was being utilized by Mr. Villarreal.

09:54:27 21 Q. And what is the importance for law enforcement of obtaining

09:54:31 22 phone numbers from possible suspects?

09:54:34 23 A. The importance is to get this telephone number and to start

09:54:38 24 looking at the specific contacts or start analysis -- doing an

09:54:44 25 analysis of the phone to see what other subjects this person is

09:54:47 1 speaking to.

09:54:48 2 Q. And how is federal law enforcement able to look at the

09:54:53 3 contacts of a particular person's phone?

09:54:56 4 A. Federal agents requesting a toll section or, rather, it's a

09:55:03 5 download or an indication of who this person -- or analysis of

09:55:08 6 who this person is contacting numerically.

09:55:11 7 Q. When you say toll records, is that like a phone bill just to

09:55:14 8 show the past contacts?

09:55:15 9 A. That's correct.

09:55:16 10 Q. All right. And what do you do with this contact list of

09:55:19 11 this phone bill?

09:55:20 12 A. Normally this phone bill is run through your indices, DA

09:55:25 13 indices, and from there, we gather feedback of who this person is

09:55:30 14 talking to, other subjects.

09:55:32 15 Q. And based on that, what was your next investigative step?

09:55:35 16 A. Our next investigative step is that at this time, I was

09:55:39 17 liaison with our Houston DEA office. We were again working

09:55:46 18 specifically because he was providing numbers that we knew were

09:55:50 19 being used by Miguel Trevino-Morales.

09:55:54 20 Q. And, again, Mr. Miguel Trevino-Morales, "40," was the

09:55:59 21 subject of your investigation or the target, correct?

09:56:01 22 A. Yes. One of the main targets.

09:56:03 23 Q. Could you explain to the jury what a T3 is?

09:56:07 24 A. A T3 is, in essence, a wiretap.

09:56:12 25 Q. And could you explain to the jury how you as an agent goes

09:56:15 1 about obtaining authorization for a wiretap?

09:56:17 2 A. Yes, sir. Gather -- initially, one has to identify a target

09:56:26 3 telephone, that is, a phone that is being used by a subject to

09:56:30 4 further a drug crime. From there, one has to ascertain

09:56:36 5 information to show -- or, rather, through this toll analysis, as

09:56:42 6 previously mentioned, to identify other subjects within the

09:56:44 7 circle. On top of that, one has to prepare, go through numerous

09:56:50 8 exhaustive steps and prepare what is known as an affidavit that

09:56:54 9 is to be reviewed first by the agent in coordination with the

09:57:01 10 AUSA or the federal attorney.

09:57:02 11 MR. DEGEURIN: Pardon me. Your Honor, I object to

09:57:04 12 relevance.

09:57:06 13 MR. GARDNER: Your Honor, I'm laying the foundation for

09:57:08 14 a Title III before I introduce.

09:57:12 15 THE COURT: Objection is overruled.

09:57:16 16 Q. (BY MR. GARDNER) And so, you conduct a review, I believe the

09:57:18 17 last statement was, with the AUSA?

09:57:22 18 A. Yes, sir.

09:57:22 19 Q. And then, what is the next step after that?

09:57:24 20 A. After the AUSA, again, this affidavit is laying the ground

09:57:29 21 you have to show that this wiretap is -- you've gone through very

09:57:35 22 exhaustive means, meaning that you've conducted surveillance,

09:57:40 23 you've done trash pulls, you've done other means that are

09:57:43 24 available to you. Once you've gone through the exhaustive steps,

09:57:48 25 you have to show the Court that by those means alone, you cannot

09:57:50 1 fully identify or further your investigation.

09:57:54 2 So then, that means you have to go to the next step of
09:57:57 3 presenting, again, the probable cause for this phone. This is
09:58:01 4 now reviewed by the Department of Justice. And then, finally,
09:58:05 5 the affidavit is sent back down and it's finally authorized. The
09:58:10 6 Court authorizes by the district court judge in that respective
09:58:14 7 jurisdiction.

09:58:14 8 Q. And how long by law are you authorized to listen to
09:58:19 9 somebody's phone?

09:58:19 10 A. By law, initially you're allowed 30 days and you have to
09:58:25 11 report to the Court at least every 10, 15 days, depending on the
09:58:30 12 Court's requirements of how you're coming along, rather, are you
09:58:35 13 receiving pertinent calls, how many pertinent calls to show that
09:58:39 14 you -- this means that you are actually doing what you've laid
09:58:43 15 out in your affidavit that you're going to do.

09:58:45 16 Q. What's the difference between a pertinent call and a
09:58:48 17 non-pertinent call?

09:58:48 18 A. A pertinent call is a call that is furthering the drug
09:58:54 19 crime. A non-pertinent call may be just regular day-to-day
09:58:58 20 business.

09:58:59 21 Q. And for law enforcement, what is the evidentiary value of
09:59:04 22 being able to listen to somebody's phone calls?

09:59:06 23 A. The evidentiary value is it's -- you're gaining insight into
09:59:10 24 the conversations that are occurring between the subjects on a
09:59:15 25 day-to-day basis, coupled with what you're either seeing through

09:59:19 1 surveillance or what you're gaining from other persons that may
09:59:21 2 be cooperating in this investigation. As you're putting the
09:59:26 3 pieces together to make sense of what's going on with these
09:59:30 4 particular subjects.

09:59:32 5 Q. And how do you verify the conversations you hear on the
09:59:37 6 phone?

09:59:40 7 A. If you can, during the time if it's either through
09:59:44 8 surveillances and sometimes when they're talking about a specific
09:59:49 9 situation and if you are able to seize maybe narcotics or if
09:59:54 10 you're able to cooperate via that means, then you're coupling
10:00:00 11 together. Or in other cases, if you don't seize the narcotics at
10:00:04 12 the time of arrest, you may go back through the calls and piece
10:00:08 13 together this puzzle, as I refer to, to make sense of what was
10:00:13 14 going on during these calls to further that specific drug crime.

10:00:17 15 Q. And did you obtain and go through those steps to obtain a
10:00:20 16 Title III authorization for Ramiro Villarreal's phone?

10:00:24 17 A. The Houston office did, sir.

10:00:26 18 Q. And were you part of that investigation?

10:00:28 19 A. Yes, sir. I was.

10:00:30 20 Q. I'm going to show you Government's Exhibit 381A and 381B.
10:00:39 21 Sir, are those your initials on 381A?

10:00:42 22 A. Yes, sir, they are.

10:00:43 23 Q. And, sir, as part of this investigation, did you have the
10:00:46 24 opportunity to have a number of discussions with Mr. Villarreal?

10:00:49 25 A. Yes, I did.

10:00:50 1 Q. And such that you were able to rec -- were you able to
10:00:53 2 recognize his voice on the Title III?

10:00:55 3 A. Yes, sir, I was.

10:00:56 4 Q. All right. And, sir, has that Title III been supplied or
10:00:59 5 the disc itself in the care, custody and control of the Drug
10:01:02 6 Enforcement Administration?

10:01:03 7 A. Yes, sir, it has.

10:01:04 8 Q. All right. And, sir, have you reviewed the selected
10:01:07 9 transcripts from that call?

10:01:07 10 A. Yes, sir, I have.

10:01:11 11 Q. Your Honor, I'd offer Government's Exhibit 381A, which is
10:01:14 12 the actual wiretap disc, and 381B, which are selected
10:01:21 13 transcripts, your Honor. They've been certified by the
10:01:24 14 government's translator and been reviewed by the Court's
10:01:27 15 translator, previously provided to defense counsel.

10:01:51 16 MR. FINN: Your Honor, I'm going to have to object on
10:01:52 17 confrontation clause grounds. And I can elaborate if you like.

10:02:04 18 THE COURT: The objection that you wish, for the
10:02:06 19 record, I don't require elaboration. Do you have anything in
10:02:12 20 addition to your objection?

10:02:15 21 MR. FINN: No. That's my objection.

10:02:16 22 THE COURT: All right. That objection is overruled
10:02:19 23 with regard to the 381B. As I understand, 381A is all of the
10:02:34 24 transcriptions?

10:02:34 25 MR. GARDNER: No, sir, your Honor. 381A is the wiretap

1 disc itself, the physical phone calls. 381B are the government's
10:02:42 2 selected --

10:02:43 3 THE COURT: Right.

10:02:44 4 MR. GARDNER: -- translations. Yes, sir.

10:02:48 5 THE COURT: Then for the time being, I'll admit 381B.

10:02:57 6 If 381A needs to come in for any reason, any counsel can request
10:03:03 7 that they come in.

10:03:05 8 MR. GARDNER: Your Honor, I don't plan on playing the
10:03:06 9 disc for this particular witness. I have another witness for
10:03:09 10 that purpose.

10:03:09 11 THE COURT: Okay.

10:03:10 12 Q. (BY MR. GARDNER) And so, Special Agent Amarillas, as based
10:03:18 13 off this wiretap, what efforts did you conduct to corroborate
10:03:25 14 what you heard on the phone itself?

10:03:28 15 A. During the time, there was numerous conferences that were
10:03:33 16 participating with us and us with them in furthering what we were
10:03:35 17 listening to. We heavily -- worked really closely with our
10:03:42 18 Houston office and with their financial team to find out, you
10:03:46 19 know, as we learned that horses were being purchased to find out
10:03:50 20 who was owning these horses. We learned some valuable
10:03:54 21 intelligence of who the horses were being transferred to.

10:04:00 22 And largely, we were monitoring what Mr. Villarreal's
10:04:04 23 travels and, also, as he -- with an ultimate goal of seeing if he
10:04:10 24 was -- his communication with Miguel Trevino-Morales, A/K/A "40."

10:04:16 25 Q. Now, when you tap a phone, do you also seek the

10:04:21 1 authorization to determine the geographical location based on any
10:04:27 2 of the cellphone towers or global positioning system?

10:04:30 3 A. Yes, sir, we do.

10:04:30 4 Q. And did you obtain that in Mr. Villarreal's case?

10:04:33 5 A. I don't recall if that was done here on our side or not.

10:04:40 6 Q. At some point, did you stop Mr. Villarreal?

10:04:42 7 A. Yes, sir. He was stopped. Yes.

10:04:44 8 Q. And without getting into what specifically Mr. Villarreal

10:04:47 9 said, did you have a number of discussions with him following his

10:04:52 10 stop?

10:04:52 11 A. Yes, sir, I did.

10:04:53 12 Q. And was he ever placed under arrest?

10:04:58 13 A. He was held temporarily and released.

10:05:02 14 Q. Detained?

10:05:02 15 A. Yes, sir.

10:05:04 16 Q. And did Mr. Villarreal agree to cooperate with the

10:05:06 17 government for a little bit?

10:05:07 18 A. Yes.

10:05:08 19 Q. And at some point, was your investigation with Mr.

10:05:16 20 Villarreal concluded?

10:05:17 21 A. Yes, sir, it was.

10:05:17 22 Q. And why was that?

10:05:18 23 A. He died in March 2011. I believe the specific date was

10:05:26 24 March 11, 2011. It was a car crash on the highway leading to the

10:05:34 25 Columbia bridge on the south side. It was a fiery crash where he

10:05:38 1 burned to death.

10:05:39 2 Q. And with respect to Mr. Villarreal and your efforts for

10:05:43 3 "40," did that sort of conclude that phase of the investigation?

10:05:45 4 A. Yes, sir. And then, I transferred out of country shortly

10:05:49 5 thereafter.

10:05:49 6 Q. May I have one moment, your Honor? Your Honor, I'll pass

10:05:56 7 the witness.

10:06:02 8 THE COURT: Mr. Finn or Ms. Williams?

10:06:04 9 MR. FINN: No questions, Judge.

10:06:06 10 THE COURT: Mr. Sanchez.

10:06:08 11 CROSS-EXAMINATION

10:06:08 12 BY MR. SANCHEZ:

10:06:18 13 Q. Mr. Amarillas.

10:06:19 14 A. Yes, sir.

10:06:20 15 Q. My name is Andres Sanchez.

10:06:23 16 A. Morning, sir.

10:06:32 17 Q. I just want to ask you a couple of questions.

10:06:35 18 A. Yes, sir.

10:06:35 19 Q. I pulled out one of the transcripts of 381.

10:07:25 20 A. Yes, sir. Uh-huh.

10:07:27 21 Q. And I'll ask you some questions about that in a minute. But

10:07:30 22 I want to ask you some questions.

10:07:35 23 We talked a little bit about the steps you went through

10:07:39 24 to get a wiretap. Do you include in those steps the people that

10:07:44 25 you have of interest?

10:07:45 1 A. Yes.

10:07:46 2 Q. And did you include a person that has a last name Toncrete?

10:07:53 3 A. I don't recall.

10:07:54 4 Q. You don't recall?

10:07:55 5 A. I don't recall. No, sir.

10:07:56 6 Q. If I said to you inside one of those applications, you have

10:08:00 7 a guy named Pancho Toncrete, would that refresh your memory?

10:08:05 8 A. I'd have to see the affidavit, but if you will show it to

10:08:08 9 me, I'd be more than happy.

10:08:09 10 Q. I don't have it with me.

10:08:10 11 A. Okay.

10:08:11 12 Q. But we'll move on.

10:08:12 13 A. Sir.

10:08:14 14 THE COURT: When you say transcript, I assume you're

10:08:17 15 talking about 381B?

10:08:20 16 MR. SANCHEZ: Yes, your Honor.

10:08:20 17 THE COURT: All right.

10:08:21 18 MR. SANCHEZ: It's one of the -- there's how many?

10:08:23 19 THE COURT: Well, there are only three. Only reason I

10:08:25 20 ask you is I didn't admit 381A yet.

10:08:28 21 MR. SANCHEZ: Right. And I'm just pulling out --

10:08:30 22 there's 14?

10:08:31 23 MR. GARDNER: Your Honor, if I may, there's a session

10:08:34 24 number on top of each transcript that identifies it individually.

10:08:37 25 So that may help for the record purposes.

10:08:39 1 THE COURT: All right.

10:08:45 2 Q. (BY MR. SANCHEZ) So this is session No. 1061?

10:08:49 3 A. Yes, sir.

10:08:50 4 Q. And that comes from 381B?

10:08:53 5 A. The disks, 381A or B.

10:08:57 6 Q. Okay. Try to clear it up, your Honor.

10:09:03 7 Also in there, you talk -- well, first of all, are you

10:09:06 8 familiar with the person named Carlos Nayen?

10:09:11 9 A. Yes, I am.

10:09:11 10 Q. Do you know he goes by the nickname "Carlitos"?

10:09:14 11 A. Yes, I do.

10:09:14 12 Q. Are you also familiar with another person within the Zeta

10:09:19 13 organization that has the nickname "Carlitos"?

10:09:23 14 A. Not that -- that rings a bell right now. No, sir, I'm not.

10:09:32 15 Q. Okay. Do you know of a guy -- so you don't know of a Zeta

10:09:35 16 that goes by the name "Comandante Carlitos"?

10:09:39 17 A. At this time, it does not ring a bell. No, sir.

10:09:44 18 Q. And in this call here that we were just referencing, they

10:09:48 19 talk about Carlitos and they also mention a "Pancho"?

10:09:52 20 A. Uh-huh. Yes, sir.

10:09:54 21 Q. You don't know exactly who that "Carlitos" is or who that

10:10:00 22 "Pancho" is?

10:10:00 23 A. No. I do not.

10:10:02 24 Q. Pass the witness, your Honor.

10:10:06 25 MR. WOMACK: No questions, your Honor.

10:10:09 1 MR. ESPER: Nothing, your Honor.

10:10:09 2 MR. MAYR: Briefly, your Honor.

10:10:12 3 CROSS-EXAMINATION

10:10:12 4 BY MR. MAYR:

10:10:48 5 Q. Agent Amarillas, in your -- in the course of your

10:10:51 6 investigation, you had a number of contacts or conversations with

10:10:54 7 Mr. Villarreal; is that correct?

10:10:55 8 A. That is correct.

10:10:56 9 Q. I'm not going to go into what was said, but did he ever

10:11:00 10 mention the name Jesus Huitron to you?

10:11:03 11 A. I knew the last name Huitron, but specific for him, no, I

10:11:07 12 don't recall.

10:11:08 13 Q. And then, you listened -- you listened and reviewed multiple

10:11:12 14 conversations. Did you ever hear the name Jesus Huitron ever

10:11:15 15 come up?

10:11:15 16 A. No, sir. I did not.

10:11:16 17 Q. No further question, your Honor.

10:11:21 18 MR. GARDNER: Nothing in light of that, your Honor.

10:11:23 19 THE COURT: May this witness be excused, counsel?

10:11:25 20 MR. FINN: No objection.

10:11:25 21 THE COURT: You may be excused. You may call your next

10:11:29 22 witness.

10:11:29 23 MR. GARDNER: Your Honor, the government calls Special

10:11:36 24 Agent Bill Johnston.

10:11:58 25 THE COURT: Be sworn, please.

10:12:00 1 (Witness sworn.)

10:12:13 2 THE COURT: Tell us your full name, please, sir, and

10:12:20 3 spell your last.

10:12:20 4 THE WITNESS: Yes. William J. Johnston, Sr. My last

10:12:24 5 name is spelled, J-O-H-N-S-T-O-N.

10:12:28 6 THE COURT: If you'll move that mic a little bit back.

10:12:32 7 That ought to do it.

10:12:33 8 WILLIAM J. JOHNSTON, called by the Government, duly sworn.

10:12:33 9 DIRECT EXAMINATION

10:12:33 10 BY MR. GARDNER:

10:12:34 11 Q. Thank you, your Honor.

10:12:35 12 Special Agent Johnston, if you would, could you please

10:12:38 13 introduce yourself for the jury?

10:12:39 14 A. Good morning --

10:12:42 15 THE COURT: Whoa, whoa, don't get that close.

10:12:44 16 A. I work with DEA, Drug Enforcement Administration.

10:12:49 17 Q. (BY MR. GARDNER) They're not asleep yet.

10:12:51 18 How long have you worked for the DEA, sir?

10:12:54 19 A. About four years.

10:12:54 20 Q. And where are you currently stationed?

10:12:56 21 A. Laredo, Texas.

10:12:57 22 Q. And you are actually a member of this investigative team,

10:13:02 23 correct?

10:13:02 24 A. Yeah. I was DEA's case agent for this team.

10:13:04 25 Q. And as the DEA case agent, what was your task as related to

10:13:10 1 this investigation?

10:13:10 2 A. I primarily focused on the e-mail correspondence between
10:13:13 3 some of the defendants and some of the people who worked the Los
10:13:17 4 Alamitos and some of the people that worked at some of the race
10:13:19 5 horses -- the race tracks.

10:13:20 6 Q. And did you also participate in the search warrant of Carlos
10:13:25 7 Nayen's apartment?

10:13:25 8 A. Yes, sir. I was there. I was present.

10:13:28 9 Q. Did you participate in the arrest of Mr. Carlos Nayen?

10:13:30 10 A. Yes, sir.

10:13:30 11 Q. Now, with respect to the search warrants, what information
10:13:37 12 did you have to indicate that members or possible members of this
10:13:40 13 organization were using e-mail traffic?

10:13:43 14 A. We served a grand jury subpoena on multiple Los Alamitos
10:13:48 15 race track, and they responded back to us giving us e-mail
10:13:51 16 correspondence that they had with Mr. Fernando Garcia, who used
10:13:56 17 Fernie004@hotmail.com.

10:14:00 18 Q. And based on that, what steps did you take to obtain those
10:14:04 19 e-mails?

10:14:04 20 A. Following getting that e-mail, I produced a -- what's called
10:14:08 21 a preservation letter. You send it to the e-mail, in this case
10:14:12 22 it was Hotmail, which is owned and operated by Microsoft. So I
10:14:16 23 sent them a preservation letter with the e-mail address
10:14:20 24 Fernie004@hotmail.com, and asked that they do not delete any
10:14:24 25 information that was preserved on their servers.

10:14:27 1 Q. And why did you send that preservation letter?

10:14:30 2 A. We send that so that in case people are made aware that

10:14:33 3 they're under investigation, they may try to delete some of those

10:14:36 4 e-mails that are stored on the server. So when we sent that

10:14:40 5 preservation letter, they can't delete them. Even if they do

10:14:43 6 delete them, they're saved on their server.

10:14:45 7 Q. And in your case, did you find that these e-mail service

10:14:49 8 providers retained deleted e-mails without that preservation

10:14:54 9 letter?

10:14:54 10 A. No. They won't retain them. They're deleted. Once they're

10:14:57 11 deleted from the user, the server deletes them.

10:15:00 12 Q. And, sir, after that preservation letter, what steps did you

10:15:04 13 take?

10:15:04 14 A. Following getting that preservation letter, I draft up a

10:15:07 15 search warrant. I produce some probable cause on why I believe

10:15:13 16 -- why the government believes they're using this e-mail, in this

10:15:17 17 case, to conspire to money launder, and I give that e-mail to Mr.

10:15:21 18 Gardner. Mr. Gardner and I review it. Once it's given to Mr.

10:15:24 19 Gardner, it's produced to the district judge here. The district

10:15:27 20 judge or mag judge will review it, make any changes. Once the

10:15:32 21 changes are made by myself and Mr. Gardner, I go in front of the

10:15:35 22 judge, and he'll sign it and I'll sign it.

10:15:38 23 I'll submit that via fax to Hotmail, and once they

10:15:41 24 receive it, they'll produce their -- their response. They send

10:15:45 25 that back to me either on an e-mail or a CD. Once I receive

10:15:50 1 either a CD or the e-mail, I send that to our IT department, our
10:15:54 2 investigative technology department, and they upload it onto a
10:15:58 3 viewable database on a computer so I can read the e-mails in
10:16:02 4 format that's understandable.

10:16:05 5 Q. And did you eventually go through that process to obtain the
10:16:09 6 Fernie004@hotmail.com e-mail?

10:16:12 7 A. Yes, sir.

10:16:13 8 Q. All right. And did you review those e-mails?

10:16:15 9 A. Yes, sir.

10:16:15 10 Q. All right. And based on that review, what steps did you
10:16:19 11 take to obtain other e-mails?

10:16:23 12 A. Following the analysis on Fernando Garcia's e-mail, he was
10:16:28 13 e-mailing a number of other defendants in the case as well as
10:16:32 14 other people. Once I received some of his e-mails and reviewed
10:16:36 15 them, I saw that they were using e-mail correspondence
10:16:39 16 predominantly in this case to send records to talk to one another
10:16:44 17 and to talk to people in Mexico. So once I got that, I drafted
10:16:49 18 more preservation letters, more search warrants to several other
10:16:55 19 e-mail accounts. I believe approximately 14 e-mail accounts were
10:16:59 20 drafted in this case.

10:17:00 21 Q. And with respect to that, if you already have the
10:17:04 22 correspondence, for example, say from Fernie004 to someone else,
10:17:08 23 why did you feel it was necessary to get that person's account?

10:17:11 24 A. Because sometimes when you're using your e-mail address and
10:17:16 25 you're done with an e-mail, you'll delete it. Sometimes people

10:17:19 1 don't do that. They'll save their e-mails in case they have to
10:17:21 2 go back and check it out.

10:17:23 3 So what I saw in reviewing multiple e-mail accounts is
10:17:27 4 several of the e-mails were on one e-mail account and they were
10:17:29 5 not on the other e-mail account.

10:17:31 6 Q. Now, I'm going to show you Government's Exhibit 71. This is
10:17:35 7 already part of the stipulation that was seized at the Huitron
10:17:39 8 business in Austin, Texas on Highway 183. Do you recognize that,
10:17:43 9 sir?

10:17:44 10 A. Yes, sir.

10:17:44 11 Q. Did you review this item taken from the search warrant on
10:17:47 12 the Huitron residence?

10:17:48 13 A. Yes, sir.

10:17:48 14 Q. And did you use this particular item with respect to
10:17:51 15 drafting your search warrant affidavits?

10:17:53 16 A. Yes, sir.

10:17:57 17 Q. And there's a lot of scribbles on this, is there not,
10:18:07 18 Special Agent?

10:18:08 19 A. Yeah. There's some scribble on there.

10:18:09 20 Q. All right. And did you review all the pages behind it?

10:18:12 21 A. Yes, sir.

10:18:12 22 Q. And what do they appear to be to you in general?

10:18:23 23 A. Looks like a ledger for a painting.

10:18:28 24 Q. And were you aware that the Huitrons were involved in the
10:18:30 25 painting and home business?

10:18:32 1 A. Yes, sir.

10:18:33 2 Q. And so, the purpose of this exhibit on the front page is

10:18:36 3 relevant to this investigation.

10:18:38 4 A. Yes, sir. They contain the e-mail addresses.

10:18:41 5 Q. So when you looked at this exhibit seized from the Huitrons,

10:18:52 6 did you see that e-mail obviously?

10:18:54 7 A. Yes. That's Fernando Garcia's e-mail.

10:18:58 8 Q. And the jury has heard some of this one. Did you also

10:19:03 9 submit a search warrant and obtain a search warrant for that

10:19:06 10 e-mail address?

10:19:06 11 A. Yes, sir.

10:19:07 12 Q. And finally, this one right here, Jose23.Trevino@yahoo.com,

10:19:17 13 did you obtain a search warrant for that e-mail address?

10:19:19 14 A. Yes, sir.

10:19:19 15 Q. I'm showing you Government's Exhibit 358A for demonstrative

10:19:41 16 purposes.

10:19:45 17 MR. WOMACK: Your Honor, if I could get the number for

10:19:46 18 the last exhibit.

10:19:47 19 MR. GARDNER: That was 71.

10:19:52 20 Q. (BY MR. GARDNER) Do you recognize these, sir?

10:19:55 21 A. Yes, sir.

10:19:55 22 Q. And what, in fact, are they?

10:20:03 23 A. Exhibit 358A is a business record authentication declaration

10:20:10 24 from Microsoft Corporation. It's also a copy of the Hotmail

10:20:18 25 response, that e-mail spent to me on a DEA CD. For, for example,

10:20:30 1 358B, this is a request for documents regarding
10:20:39 2 Zulefarms@yahoo.com. It's also a business records declaration
10:20:43 3 stating that the information they sent is true to the best of
10:20:50 4 their knowledge.

10:20:51 5 And for Exhibit 358C, it's a gmail, which is Google,
10:20:56 6 and it's also a certification of authenticity, which is sent from
10:21:01 7 the custodian of records.

10:21:05 8 Q. And I believe, as you stated earlier, Special Agent, these
10:21:12 9 were the actual e-mails that you received from the various e-mail
10:21:16 10 providers?

10:21:17 11 A. Yes, sir.

10:21:18 12 Q. And you said you sent them to your IT, your internet
10:21:23 13 technology section?

10:21:24 14 A. Yes, sir.

10:21:25 15 Q. And what process was conducted there?

10:21:29 16 A. When in this case Yahoo, Google and Hotmail sent either it's
10:21:35 17 a disk or an e-mail to myself, that data can't be read very
10:21:40 18 easily. In this case, it was extremely hard to read some of the
10:21:45 19 data.

10:21:45 20 So what we do in DEA is I send that data to our IT
10:21:49 21 computer department, and they upload it into a viewable data.
10:21:53 22 Now, Yahoo, Hotmail and Microsoft, they don't always send it the
10:21:57 23 same. There's no go-by. There's no way that they have to send
10:22:02 24 it to us, so each one is sent differently. And Yahoo, I have to
10:22:05 25 use Microsoft Explorer to look at it. And for gmail, it's

10:22:09 1 Firefox. So they're extremely different ways to view these
10:22:12 2 e-mails.

10:22:13 3 So what our IT department does is puts it in a viewable
10:22:16 4 data so I can check them all out and look at them and review them
10:22:19 5 very easily.

10:22:22 6 Q. And did you go through those steps -- sorry. One question.

10:22:26 7 Microsoft is what e-mail?

10:22:28 8 A. Microsoft is going to be MSN, which is a Hotmail.

10:22:32 9 Q. Everyone commonly refer to as a Hotmail account?

10:22:35 10 A. Yes, sir.

10:22:36 11 Q. And generally when you were going through these e-mails,
10:22:41 12 what process -- let me strike that. Let me ask a better
10:22:46 13 question.

10:22:46 14 You said in conjunction with the IT folks that puts it
10:22:53 15 in a specific form.

10:22:55 16 A. Yeah. It's put on a specific format and it's also put onto
10:22:58 17 a computer program. It's called Cool Miner and each case is
10:23:03 18 specific to our -- I'm the only one who has the ability to check
10:23:07 19 out those e-mails. So I'll log into the computer and I'll check
10:23:10 20 out each e-mail separately. I reviewed, I think, 16,000 e-mails
10:23:16 21 in this case. And over that time, I produced a pertinent file, a
10:23:23 22 non-pertinent file and then, a file that was neither.

10:23:28 23 So I printed up the pertinent and the neither, and I
10:23:31 24 brought them to my case team and I brought them to AUSA Gardner,
10:23:36 25 and we reviewed them to see which ones were most pertinent, more

10:23:40 1 pertinent, and least, because there was such a high amount of
10:23:43 2 e-mails, 16,000 e-mails in this case.

10:23:45 3 Q. And when you were reviewing these e-mails, did you observe
10:23:48 4 that many of them were in Spanish?

10:23:49 5 A. Yes. A lot of them were in Spanish.

10:23:50 6 Q. And what steps did you take to interpret the e-mails that
10:23:54 7 were in Spanish?

10:23:55 8 A. I don't speak Spanish, so one of my task force officers from
10:23:58 9 Laredo who does sat down at the computer with me, and together,
10:24:02 10 we read over each e-mail. A lot of them were in Spanish and once
10:24:07 11 he told me what they said, I was able to say if it was pertinent
10:24:11 12 or not. I printed them up and I had him make copies of them and
10:24:14 13 write down on the e-mails what they had said and, again, I
10:24:19 14 produced that to AUSA Gardner.

10:24:20 15 Q. And subsequent to that, did you and I select those e-mails
10:24:24 16 that were being presented here in court today?

10:24:27 17 A. Yes, sir.

10:24:27 18 Q. And were those e-mails then provided to a certified
10:24:30 19 translator for the official translations?

10:24:32 20 A. Yes, sir. I believe the translator who translated that is
10:24:34 21 the same female who is up here helping out in the trial.

10:24:38 22 Q. And were those rough translations by the agent and the
10:24:42 23 official translations supplied to the defense attorneys back in
10:24:45 24 March?

10:24:45 25 A. Yes, sir.

10:24:47 1 Q. And just roughly, I want to generally talk about this is
10:24:52 2 Government's Exhibit 358G, admitted yesterday. I just want to
10:25:01 3 look at one particular page with the e-mail date of 3-30-2012 at
10:25:05 4 6:21 p.m.

10:25:09 5 What is this page and where does it come from just in
10:25:11 6 general?

10:25:11 7 A. That page is the first page when I print up an e-mail, it's
10:25:16 8 going to say the source file name, what data type it is. In this
10:25:21 9 case, it's an e-mail. The start and date time, which is going to
10:25:26 10 be the -- when the e-mail was sent or received. It's going to
10:25:30 11 have a source IP address and the subject on the subject line. In
10:25:37 12 this case it's read OLA. In this case, you're going to see a
10:25:41 13 dark black, it says e-mail address, friendly name, participant
10:25:45 14 type. So if you can see this e-mail is sent by
10:25:52 15 Miguel.Almazon@gmail.com. The name is Miguel Angel Almazon
10:25:56 16 Marine and that's from --

10:25:58 17 Q. That's the friendly name, correct?

10:25:59 18 A. Yes, sir. That's the friendly name. The e-mail that was to
10:26:04 19 was Anri2319@hotmail.com, and that friendly name is Diego
10:26:12 20 Verdaguer. As I said, I don't speak Spanish.

10:26:15 21 Q. And this down here is the DEA's file creation information,
10:26:19 22 correct?

10:26:20 23 A. Yeah. It's going to have a file type, how big the file size
10:26:23 24 is, when I reviewed it, or when it was uploaded into the Cool
10:26:26 25 Miner system, and then, on top, you can see it says undecided.

10:26:31 1 That's one of the e-mails because it was in Spanish, I wasn't
10:26:33 2 sure if it was pertinent or not, so I printed it up and had that
10:26:37 3 translated.

10:26:39 4 Q. And, in particular, the e-mails in January, for example,
10:26:44 5 we'll use this one as introduced yesterday the Anri2319. Did you
10:26:50 6 often see the friendly name changed?

10:26:52 7 A. Yes, sir. Not always was it the same.

10:26:55 8 Q. What's that an indication of based on your investigation in
10:26:59 9 this case?

10:26:59 10 A. After reviewing these e-mails, I determined that not every
10:27:04 11 e-mail from a specific e-mail address, in this case,
10:27:09 12 Anri2319@hotmail.com was sent by the same user. Sometimes the
10:27:13 13 name under the friendly name was different. In this case, it
10:27:16 14 says Diego, but in other cases, it says, "Yo Yo" or other names.

10:27:21 15 Q. Your Honor, at this time, I would move to offer Government's
10:27:26 16 Exhibit 358A, 358B and 358C for demonstrative purposes only.

10:27:59 17 THE COURT: All right. 538 hearing no objection, 358A,
10:28:04 18 B and C for demonstrative purposes are admitted.

10:28:10 19 Q. (BY MR. GARDNER) For the purposes of the court here today,
10:28:16 20 Special Agent Johnston, we selected just a number of e-mails. If
10:28:20 21 you could, could you just please go through the selected e-mail
10:28:23 22 accounts that you and I prepared for court today by e-mail name?

10:28:28 23 A. Yes, sir. The first e-mail is Fernie004@hotmail.com.

10:28:36 24 Q. And that's Government's Exhibit 358B, correct?

10:28:40 25 A. Yes, sir.

10:28:40 1 Q. One other question on that. When you obtained the e-mails,
10:28:44 2 did you obtain the subscriber information?

10:28:46 3 A. Yes, sir. This e-mail was subscribed to a Fernando Garcia.

10:28:51 4 Q. And what about the subscriber information on the other
10:28:54 5 e-mails that you obtained?

10:28:55 6 A. Some of the other e-mails were not subscribed to the person
10:28:58 7 I believe they were used. In some cases, the first name was the
10:29:03 8 same and the last name was different. In some cases, the first
10:29:06 9 name was different and the last name was also different.

10:29:08 10 Q. Is that subscriber information contained within the
10:29:10 11 exhibits?

10:29:11 12 A. Yes, sir.

10:29:11 13 Q. If you will continue, please, with the next exhibit.

10:29:14 14 A. Yes. The next exhibit is going to be 358E. It's
10:29:20 15 horses.quarter.racing@hotmail.com. The next one is going to be
10:29:31 16 Exhibit 358F, as in Fox Trot. It's going to be mr_cabrera@ --
10:29:40 17 or, I'm sorry, @hotmail.com. The next one is Exhibit 358H,
10:29:51 18 ffracingstables@gmail.com. The next one is Exhibit 358I,
10:30:04 19 zule_farms@yahoo.com. The next one is Exhibit 358J,
10:30:20 20 anali_faces@hotmail.com.

10:30:22 21 Q. Who did you understand Anali Faces to be?

10:30:25 22 A. She is the wife of Miguel Nayen-Borbolla.

10:30:30 23 Q. Also known as Carlos Nayen?

10:30:32 24 A. Yes, sir.

10:30:33 25 Q. Next exhibit?

10:30:34 1 A. The next exhibit is 358K, sergio_rincon72@hotmail.com. The
10:30:46 2 next exhibit is 358L, miguel.almazon@gmail.com. And the last one
10:30:57 3 is going to be 358G, Anri2319@hotmail.com.

10:31:05 4 Q. You spell Anri, A-N-R-I; is that correct?

10:31:07 5 A. Yes, sir. A-N-R-I.

10:31:11 6 Q. Special Agent Johnston, did you apply the same process that
10:31:13 7 you just described earlier to each and every one of these Hotmail
10:31:16 8 or e-mail accounts?

10:31:18 9 A. Yes, sir.

10:31:19 10 Q. Your Honor, I would offer Government's Exhibit 358D through
10:31:26 11 G inclusive, although I know some of them were introduced
10:31:31 12 yesterday. Your Honor, I apologize. I'd also like to introduce
10:32:19 13 358M, which is the certification by the court -- or not court
10:32:25 14 translator, but by the translator.

10:32:28 15 THE COURT: That's M?

10:32:30 16 MR. GARDNER: M, your Honor, as in Mike.

10:32:37 17 MR. MAYR: We have no objection, your Honor.

10:32:38 18 THE COURT: All right. 358D through.

10:32:43 19 MR. GARDNER: M, your Honor.

10:32:45 20 THE COURT: Well.

10:32:46 21 MR. GARDNER: You're right.

10:32:47 22 THE COURT: I've just got D, E, F, H, I, J, K, L, G and
10:32:54 23 M.

10:32:57 24 MR. GARDNER: Yes, sir. That's correct.

10:33:14 25 Q. (BY MR. GARDNER) Now, Special Agent Johnston, in your

10:33:26 1 training and experience, have you been a participant in a number
10:33:32 2 of search warrants?

10:33:33 3 A. Yes, sir.

10:33:34 4 Q. Physical search warrants, not e-mail search warrants?

10:33:36 5 A. Yes, sir.

10:33:37 6 Q. Have you conducted Title III investigations?

10:33:39 7 A. I have.

10:33:40 8 Q. Have you conducted surveillance?

10:33:42 9 A. Yes, sir.

10:33:42 10 Q. What other investigative steps have you covered in your
10:33:47 11 career?

10:33:47 12 A. Seizure of drugs, money, guns, surveillance, like you said,
10:33:55 13 seizures, search warrants on businesses, residence, e-mail
10:33:58 14 accounts, Facebook accounts, that kind of stuff.

10:34:02 15 Q. And in that training and experience, when law enforcement
10:34:05 16 makes one of those actions, what do you typically see is the
10:34:09 17 response from the criminal organization?

10:34:11 18 A. Usually participants in the organization try to distance
10:34:16 19 themselves from other members of the organization, and they'll
10:34:20 20 get rid of their cellphone. We call it dropping their cellphone,
10:34:24 21 dropping their e-mail address, their Facebook account, deleting
10:34:27 22 as much as they can to kind of remove themselves from that
10:34:30 23 organization and try to divert law enforcement from getting
10:34:35 24 evidence which could be used in the court.

10:34:39 25 Q. So let's say, hypothetically, there is a law enforcement

10:34:42 1 action and these people drop their information. What effect did
10:34:47 2 that have on your investigative steps?

10:34:49 3 A. It makes it very difficult. We might have an e-mail address
10:34:54 4 or phone number, an address. They might move, they might drop
10:34:59 5 their phone. It makes it very difficult for us to find them, use
10:35:04 6 their information to help out with our investigation.

10:35:07 7 Q. And, sir, are you familiar with the raid at the Los Alamitos
10:35:11 8 race track in March 27th of last year?

10:35:14 9 A. Yes, sir.

10:35:15 10 Q. The jury heard testimony on this account yesterday by Mr.
10:35:19 11 Felipe Quintero. Have you reviewed these e-mails?

10:35:22 12 A. Yes, sir.

10:35:22 13 Q. And when it talks about clean devices and talk to me, it's
10:35:30 14 clear, is that consistent with your testimony you just provided
10:35:33 15 regarding criminal organization activities?

10:35:35 16 A. Yeah. It's a clean a device is get a new phone or get a new
10:35:40 17 e-mail address in this case.

10:35:45 18 Q. Now, I'm showing you Government's Exhibit 358E,
10:35:57 19 horses.quarter.racing@hotmail.com. Did you see activity also
10:36:02 20 consistent with what you saw in the A-N-R-I e-mail account?

10:36:07 21 A. Yes.

10:36:08 22 Q. And was it on the same day?

10:36:10 23 A. It was on the same day and I believe the day after.

10:36:14 24 Q. When we're talking the day after, we're talking the day
10:36:18 25 after the Los Alamitos raid?

10:36:19 1 A. Yes, sir. On the 28th.

10:36:20 2 Q. And in this horses.quarter.racing@hotmail e-mail address,

10:36:27 3 are there e-mails to and from Fernando Garcia?

10:36:29 4 A. Yes, sir.

10:36:29 5 Q. Is that using the Fernie004 address?

10:36:32 6 A. Yes, sir.

10:36:32 7 Q. And when you looked at the Fernie004 address, did you see

10:36:36 8 the same e-mails?

10:36:38 9 A. I believe they were there.

10:36:41 10 Q. Is that consistent with what you described earlier about the

10:36:44 11 deleting e-mails?

10:36:45 12 A. Yeah. Sometimes when an e-mail is sent and they don't want

10:36:47 13 them to be reviewed or they don't want to see it, then they'll

10:36:50 14 just delete it.

10:36:51 15 Q. So, Special Agent, I want to turn your attention to an

10:37:14 16 e-mail, dated April 4th, 2012, 5:29, from the

10:37:32 17 horses.quarter.racing e-mail friendly name of?

10:37:34 18 A. Javier Lopez.

10:37:36 19 Q. And to who?

10:37:36 20 A. To Fernie004@hotmail.com and under the friendly name, you

10:37:43 21 can see it says, Fernando Garcia.

10:37:46 22 Q. And, again, original e-mail's in Spanish, correct?

10:37:48 23 A. Yes, sir.

10:37:49 24 Q. All right. And does it show a number of what is commonly

10:37:53 25 referred to as an e-mail string?

10:37:55 1 A. Yeah. It's e-mails back and forth sent over a period of
10:38:01 2 time that it's the same subject. So it will keep them under the
10:38:04 3 same string.

10:38:05 4 Q. And, again, did you see this string in the Fernie004?

10:38:11 5 A. No.

10:38:12 6 Q. And is this the translation?

10:38:15 7 A. Yes, sir.

10:38:37 8 Q. Let me get my act together here.

10:38:39 9 MR. WOMACK: Sir, could we get the exhibit number?

10:38:49 10 MR. GARDNER: 358E.

10:38:58 11 Q. (BY MR. GARDNER) So, Special Agent -- let me back up a
10:39:00 12 second.

10:39:00 13 On 358E, is this what you're talking about with respect
10:39:05 14 to the subscriber information?

10:39:07 15 A. Yeah. If you can see on the top field, it says log in,
10:39:11 16 that's going to be your e-mail address.

10:39:15 17 Q. Log in up here?

10:39:16 18 A. Yes, sir.

10:39:17 19 Q. E-mail address?

10:39:18 20 A. Yeah. So in this case, it's

10:39:22 21 horses.quarter.racing@hotmail.com.

10:39:24 22 Q. And as you said, that information is provided for each
10:39:28 23 e-mail address, correct?

10:39:29 24 A. Yeah. When you sign up for an e-mail address, they'll
10:39:32 25 assign you whatever e-mail address you want as long as it's

10:39:34 1 available, and you can put in any name you want as the user name.

10:39:41 2 Q. Give me one second. Let me start with another e-mail first.

10:39:55 3 This e-mail's dated March 31st.

10:39:59 4 A. Yes, sir.

10:40:02 5 THE COURT: Are you about to get into the e-mail

10:40:05 6 itself?

10:40:06 7 MR. GARDNER: Yes, your Honor.

10:40:08 8 THE COURT: All right. I'm going to give -- members of

10:40:09 9 the jury, you may not need another break, but my court reporter

10:40:12 10 has been working all through the time that you've been out of the

10:40:16 11 room and she needs a break, and I expect the lawyers do, too. So

10:40:20 12 let's take a ten-minute break to use the facilities. Be ready to

10:40:23 13 come back.

10:40:53 14 (Jury not present.)

10:41:02 15 THE COURT: Ten-minute recess.

10:52:33 16 (Recess.)

10:53:06 17 (Jury present.)

10:54:37 18 Q. (BY MR. GARDNER) Special Agent Johnston, when we left, we

10:54:39 19 were ready to talk about an e-mail. And just again, this e-mail

10:54:42 20 is dated on March 31st of 2012.

10:54:45 21 A. Yes, sir.

10:54:45 22 Q. And prior to the break, I believe you said the date of the

10:54:50 23 raid at Los Alamitos, when was that?

10:54:52 24 A. It was March 27th, 2012.

10:54:54 25 Q. And, again, this e-mail's from who, addressed to whom?

10:55:03 1 A. Can you zoom out a little bit? It's going to be from
10:55:09 2 horses.quarter.racing@hotmail to Fernie004@hotmail.com.
10:55:17 3 Q. And, again, Spanish original e-mail, correct?
10:55:21 4 A. Yes, sir.
10:55:32 5 Q. And the English translation behind it?
10:55:34 6 A. Yes, sir.
10:55:39 7 Q. Could you do me a favor and read that into the record,
10:55:42 8 please?
10:55:42 9 A. Yes, sir. Shaman told me that you should toss your cell and
10:55:48 10 destroy everything else that was theirs. Get rid of your face on
10:55:52 11 your computer. PSS, that's what he said. Sweetie, please, if
10:55:58 12 you have a pin or something or some other means, let me know so
10:56:02 13 that we can talk and get things organized. Things pending.
10:56:10 14 Q. Now, this toss your cell, is this consistent with your
10:56:13 15 earlier testimony regarding the common attributes of a criminal
10:56:17 16 organization?
10:56:17 17 A. Yeah. Yes, sir.
10:56:19 18 Q. And destroy everything else, in your opinion, was that also
10:56:25 19 common?
10:56:25 20 A. Yes.
10:56:26 21 Q. It says, get rid of your face. What do you interpret that
10:56:29 22 to be?
10:56:29 23 A. I would go to say that that means they mean their Facebook
10:56:33 24 account on their computer.
10:56:37 25 Q. And finally, down here at the end, sweetie, if you have a

10:56:41 1 pin or some other means, let me know. What is a PIN?

10:56:44 2 A. A PIN is a BlackBerry. It's PIN-to-PIN messaging. It's a

10:56:50 3 very secure way of messaging someone. Kind of like a text

10:56:54 4 message, but it's through the BlackBerry phone.

10:56:58 5 Q. And if I had a PIN but I don't know yours, could I still

10:57:04 6 talk to you via that method?

10:57:07 7 A. You could call, but you couldn't talk on a PIN. A

10:57:11 8 PIN-to-PIN, you need to know each person's PIN. And each

10:57:14 9 person's PIN is an eight digit and letter, kind of like a text

10:57:18 10 message, but it's more secure.

10:57:19 11 Q. So I want to go to the next e-mail. This one is dated

10:57:31 12 3-31-2012. I'm sorry. That was the same one. This one's dated

10:57:38 13 April 4th, 2012. For the record, can you say from who the e-mail

10:57:42 14 is and to whom it's addressed?

10:57:44 15 A. Yes. It's from horses.quarter.racing@hotmail.com and it's

10:57:50 16 to Fernie004@hotmail.com.

10:57:54 17 Q. And, again, there's the original e-mail in Spanish, correct?

10:57:57 18 A. Yes, sir.

10:58:00 19 Q. Okay. I want to start from the bottom. And if you will,

10:58:07 20 just for the record so it's clear, could you read this bottom

10:58:11 21 portion of the e-mail?

10:58:11 22 A. Yes, sir. What's up Shayman? What have you been doing?

10:58:15 23 You have a pin?

10:58:18 24 Q. And then, is this the response the next line up on April

10:58:21 25 3rd, 2012 at 8:23? Is that a response from Fernando Garcia?

10:58:24 1 A. Yes. That's from Fernie004@hotmail to
10:58:31 2 horses.quarter@hotmail. It says, Huitron says for you to call
10:58:33 3 him.
10:58:34 4 Q. And based on this alone, do you know whether that's "Chevo"
10:58:37 5 Huitron or?
10:58:38 6 A. "Chevo" Huitron.
10:58:39 7 Q. You say that because of the next line in the e-mail string
10:58:42 8 and that was dated also April 3rd at 13:44. Is this the 24-hour
10:58:49 9 clock?
10:58:49 10 A. Yeah. So that would be 1:44.
10:58:51 11 Q. If you would read that into the record for me.
10:58:53 12 A. Yes. Sweetie, if you come by for expenses and some
10:58:56 13 instructions, please let me know. And Chevo is not answering.
10:59:01 14 Q. And on the same date at what is 7:39, is this the response
10:59:05 15 from Fernando?
10:59:06 16 A. Yes, sir.
10:59:07 17 Q. What's that say?
10:59:08 18 A. Where do I go? When?
10:59:11 19 Q. And finally, the response from horses.quarter, dated next
10:59:18 20 day at 5:24 a.m., correct?
10:59:20 21 A. Yes, sir.
10:59:21 22 Q. And if you will, read that one into the record.
10:59:23 23 A. Over here where I am, sweetie, on the border. So as to give
10:59:28 24 you a phone and some instructions. Sweetie, I need you to send
10:59:31 25 me all the registrations. I've been asking for them. Please,

10:59:35 1 let me know what's up. My regards, bye.

10:59:39 2 Q. Sir, is this e-mail string consistent with other

10:59:43 3 investigations you've done in your past with regards to dropping

10:59:47 4 and obtaining new phones?

10:59:49 5 A. Yes.

10:59:49 6 Q. And the next e-mail, April 5, 2012, same individuals,

11:00:04 7 correct?

11:00:04 8 A. Yes, sir.

11:00:05 9 Q. Could you read the one dated April 5th, time 10:51:30?

11:00:17 10 A. Yes, sir. Yes, to the address that you gave me, I'll send

11:00:21 11 you the reference number soon. Listen, the Texas trainer wants

11:00:25 12 you to call him. Send me your BB so I can add you.

11:00:31 13 Q. Do they identify in either this string or another string who

11:00:35 14 the Texas trainer is?

11:00:37 15 A. From past e-mails, I believe the Texas trainer is --

11:00:42 16 MR. ESPER: Objection, your Honor. It calls for

11:00:45 17 speculation on the part of the witness.

11:00:45 18 Q. (BY MR. GARDNER) I'll ask another question. And the BB,

11:00:48 19 have you seen that before?

11:00:49 20 A. Yes. It means BlackBerry.

11:00:50 21 Q. And is this the response?

11:00:53 22 A. Yes, sir.

11:00:54 23 Q. Could you read that into the record, please?

11:00:55 24 A. All right sweetie. I'll call him soon. I'm on the road.

11:00:59 25 Send me yours. I got a new one soon and add you.

11:01:04 1 Q. And if I get a new BlackBerry, does that come with its own
11:01:09 2 independent translation?

11:01:11 3 A. Yes. Each BlackBerry.

11:01:13 4 Q. PIN, I'm sorry?

11:01:13 5 A. Each BlackBerry phone has a significant PIN that's assigned
11:01:17 6 to that phone. If I drop or toss my cellphone, that BlackBerry
11:01:23 7 PIN can only be used on that specific phone. So for someone to
11:01:26 8 get a new BlackBerry phone to talk to someone else, they need
11:01:31 9 their specific PIN. Like I said, it's eight digits and numbers
11:01:35 10 put together.

11:01:36 11 Q. So the last e-mail I want to show you here is dated also
11:01:39 12 April 5th, 11:31 p.m., and let's go straight to the translation.
11:01:47 13 I'd just like to start here.

11:01:49 14 And this is from horses to Fernie. If you could read
11:01:51 15 that, please.

11:01:52 16 A. Sweetie, send me your BBM so I can add you.

11:01:56 17 Q. And what is Fernando Garcia's response?

11:01:59 18 A. Like I said, that's going to be the PIN that's associated
11:02:03 19 with the phone that he was currently using or that he currently
11:02:06 20 bought.

11:02:11 21 Q. Sir, again, is it your opinion that this e-mail traffic is
11:02:16 22 consistent with other investigations you've conducted in the past
11:02:19 23 of similar activity?

11:02:20 24 A. Yes, sir.

11:02:20 25 Q. May I have one moment, your Honor?

11:02:22 1 THE COURT: You may.

11:02:28 2 MR. GARDNER: Your Honor, I'll pass the witness.

11:02:42 3 CROSS-EXAMINATION

11:02:42 4 BY MR. FINN:

11:02:43 5 Q. Good morning, Special Agent. How are you?

11:02:44 6 A. Good, sir.

11:02:45 7 Q. Good. Another day in paradise. My name is David Finn and I

11:02:49 8 just have a couple of questions. I represent Jose Trevino.

11:02:51 9 A. Yes, sir.

11:02:52 10 Q. And I heard you say, just a moment ago, that tossing

11:02:56 11 cellphones is a common criminal organization practice; is that

11:03:02 12 correct?

11:03:02 13 A. Yes, sir.

11:03:03 14 Q. So if somebody held onto the same phone with the same number

11:03:08 15 for many years, that would be inconsistent with this common

11:03:12 16 criminal organization practice, wouldn't it?

11:03:17 17 A. A lot of people have multiple phones.

11:03:19 18 Q. Okay. Let me ask the question again. If it's true that a

11:03:23 19 common criminal organization practice is to toss cellphones, you

11:03:29 20 agree with that, correct?

11:03:29 21 A. Yes, sir.

11:03:30 22 Q. Then if I hold on and I'm a criminal, if I hold onto the

11:03:35 23 same phone number and the same phone for five years, that would

11:03:38 24 be in your experience and training inconsistent with common

11:03:42 25 criminal activity; isn't that correct?

11:03:45 1 A. For that one phone, yes, sir.

11:03:46 2 Q. Thank you. That's all.

11:03:50 3 THE COURT: Mr. Sanchez.

11:03:58 4 MR. SANCHEZ: Do you know what number we're up to?

11:04:01 5 Ten?

11:04:07 6 THE COURT: I think he was using 358E? Is that your --

11:04:16 7 MR. SANCHEZ: I've got some others.

11:04:18 8 CROSS-EXAMINATION

11:04:20 9 BY MR. SANCHEZ:

11:04:20 10 Q. Mr. Johnston, we went over this during the break, these five

11:04:23 11 e-mails; is that right?

11:04:24 12 A. Yes, sir, we did.

11:04:24 13 Q. And these five e-mails are part of the e-mail search warrant

11:04:32 14 that you conducted?

11:04:34 15 A. Yes, sir.

11:04:35 16 Q. Or, in other words, as part of the return?

11:04:37 17 A. Yeah. There was a lot of e-mails.

11:04:39 18 Q. 16,000?

11:04:40 19 A. Approximately.

11:04:41 20 Q. Okay. Your Honor, I'm going to introduce five e-mails

11:04:47 21 labeled as Colorado 10, one of them is translated, the other four

11:04:51 22 are not. And I'll -- by agreement, I'll have them translated as

11:04:55 23 soon as I can.

11:04:56 24 MR. GARDNER: No objection, your Honor.

11:04:57 25 THE COURT: All right.

11:05:01 1 MR. SANCHEZ: And I'll pass the witness, your Honor.

11:05:02 2 THE COURT: Do you want to identify them with a number?

11:05:07 3 MR. SANCHEZ: I could do that.

11:05:15 4 THE COURT: Would be, what, 10?

11:05:18 5 Q. (BY MR. SANCHEZ) This is Colorado 10. So this is the first

11:05:20 6 one that you actually had translated; is that correct?

11:05:23 7 A. Yes. I had it translated.

11:05:25 8 Q. And this one is dated February 1st, 2012?

11:05:29 9 A. Yes, sir.

11:05:32 10 Q. And this is one that you did not have translated; is that

11:05:36 11 correct?

11:05:36 12 A. Yes, sir.

11:05:37 13 Q. And this one, this is the second one in the group, and this

11:05:41 14 is from February 21, 2012 from Miguel Alamazon to this Anri2319?

11:05:49 15 A. Yes, sir.

11:05:52 16 THE COURT: Counsel, if you'd just read the

11:05:55 17 identification or the date because you're going to do it in one

11:06:00 18 exhibit.

11:06:01 19 MR. SANCHEZ: That's right, your Honor.

11:06:02 20 THE COURT: Just identify the number of them and --

11:06:07 21 MR. SANCHEZ: Okay.

11:06:08 22 THE COURT: I'll admit it, because there's no

11:06:10 23 objection, and then, you could have the translation later.

11:06:13 24 MR. SANCHEZ: The third one is on April 15th -- or,

11:06:15 25 sorry, April 14th, 2012. The fourth one is May 2nd, 2012. And

11:06:22 1 the fifth one is from August 25th, 2012. Your Honor, it's five
11:06:26 2 grouped together. It's Colorado 10.

11:06:27 3 THE COURT: Thank you. And Colorado 10 is admitted
11:06:30 4 without objections. So if you'll do your translation, it's 10A.
11:06:38 5 You can get those to the clerk.

11:06:41 6 MR. SANCHEZ: Thank you, your Honor.

11:06:42 7 THE COURT: All right. Mr. Womack.

11:06:45 8 MR. WOMACK: Yes, your Honor. Thank you.

11:06:46 9 CROSS-EXAMINATION

11:06:46 10 BY MR. WOMACK:

11:06:50 11 Q. Good morning, Special Agent Johnston.

11:06:51 12 A. Good morning, sir. How are you?

11:06:52 13 Q. I'm Guy Womack from Houston. We've never met before, have
11:06:56 14 we?

11:06:56 15 A. No, sir.

11:06:57 16 Q. But we rode the elevator this morning. We didn't introduce
11:07:00 17 ourselves?

11:07:01 18 A. I don't remember, sir.

11:07:02 19 THE COURT: That's interesting. Let's go to the
11:07:04 20 questions.

11:07:04 21 Q. (BY MR. WOMACK) Yes, sir.

11:07:05 22 A couple of questions about establishing an e-mail
11:07:08 23 account.

11:07:08 24 A. Uh-huh.

11:07:09 25 Q. You talked about this -- and all of us that have used e-mail

11:07:14 1 know that in our own e-mail account, we may have an address book?

11:07:18 2 A. Yes.

11:07:18 3 Q. And in that address book, we can save an e-mail if we get

11:07:23 4 one from someone that we want to save to use again or whatever.

11:07:28 5 And in our address book, it will print their e-mail address, and

11:07:33 6 then, it has a place for to put the person's name. And then, it

11:07:38 7 has a thing, a block where you show the friendly name; is that

11:07:43 8 right?

11:07:43 9 A. I don't know off the top of my head. I haven't set up my

11:07:46 10 e-mail address like that.

11:07:48 11 Q. Okay. Your personal e-mail?

11:07:50 12 A. Yes, sir.

11:07:52 13 Q. If someone sends you an e-mail, family, anybody, a friend,

11:07:56 14 whoever, and you save it into your in box -- I mean, into your

11:08:03 15 address book on your e-mail account, can you not assign a

11:08:06 16 friendly name for that person?

11:08:07 17 A. I have never done that. I'm not saying you can't. But I've

11:08:11 18 never done it.

11:08:11 19 Q. Would it surprise you that that's how you establish a

11:08:14 20 friendly name is you put in there the friendly name that you use

11:08:18 21 for that person? It could be anything you want to put. And that

11:08:22 22 way when you see an e-mail come from that person, you say, oh,

11:08:25 23 that's what's his name, and so, you can establish your own

11:08:29 24 friendly name for someone. But you didn't know that?

11:08:31 25 A. I didn't know that.

11:08:32 1 Q. Okay. Well, then, do you know how friendly names are
11:08:37 2 established in everybody's e-mail account? You don't really know
11:08:43 3 that, do you?

11:08:43 4 A. No.

11:08:44 5 Q. Okay. But yet, you would agree that the friendly -- what
11:08:49 6 you're calling a friendly -- is it name? Friendly what?

11:08:54 7 A. Friendly name is just how the machine that -- or the
11:08:58 8 computer program we use says who it's from or -- not the subject
11:09:03 9 line but the person who's sending it that's not identified as
11:09:06 10 their e-mail address.

11:09:07 11 Q. Okay. So you don't know how that friendly name is
11:09:11 12 established. You just know that typically with the e-mail there
11:09:14 13 will be a friendly name associated with particular address?

11:09:16 14 A. I believe that when you start your e-mail address, when I
11:09:20 15 would start an e-mail address, I would put in the friendly name I
11:09:24 16 would want to be identified as. That's how I thought it was
11:09:26 17 used.

11:09:27 18 Q. Okay. But yet, you've never -- you've never established a
11:09:32 19 friendly e-mail name for the people you're receiving e-mails
11:09:35 20 from. You've never done that?

11:09:36 21 A. I don't have an address book.

11:09:38 22 Q. Oh, okay. I gotcha. So you don't know how that's actually
11:09:42 23 done then?

11:09:42 24 A. I could make an address book. I just on my personal e-mail
11:09:45 25 account, I don't have one.

11:09:46 1 Q. Okay. Now, it was Government's Exhibit 71, which is?

11:10:00 2 MR. GARDNER: It's with the clerk.

11:10:04 3 Q. (BY MR. WOMACK) I want to show you what's been admitted --

11:10:44 4 MR. GARDNER: Admitted.

11:10:45 5 Q. (BY MR. WOMACK) -- as Government's Exhibit 71. Now, 71 is

11:10:50 6 actually a -- it's a legal pad, isn't it?

11:10:52 7 A. Yes, sir.

11:10:53 8 Q. And you were shown one page of that legal pad when

11:11:00 9 discussing the exhibit; is that right?

11:11:01 10 A. This morning?

11:11:02 11 Q. Yes.

11:11:04 12 A. I believe AUSA Gardner showed me multiple pages on it.

11:11:08 13 Q. Okay. And remember that he had -- you testified about one

11:11:10 14 page that had e-mail addresses and had some other information on

11:11:15 15 it?

11:11:15 16 A. Yes, sir.

11:11:16 17 Q. Is that the first page?

11:11:18 18 A. That is the first page.

11:11:19 19 Q. Now, do you know whose handwriting is on the first page?

11:11:23 20 A. I do not know whose handwriting is on the first page.

11:11:26 21 Q. Do you know if it's one person, or is it several people, or

11:11:30 22 do you have any idea?

11:11:33 23 A. From looking at it, there's several -- at least two

11:11:38 24 different handwritings.

11:11:39 25 Q. Okay. But we have no idea who they were?

11:11:41 1 A. I don't know who they are.

11:11:43 2 Q. Okay. And, again, if you can tell us, where was that

11:11:47 3 notepad or that legal pad? Where was it found?

11:11:50 4 A. That was found during a search warrant. I believe during

11:11:57 5 Eusevio Huitron's search warrant.

11:11:59 6 Q. Someone serving Mr. Huitron's home, business, whatever,

11:12:02 7 found that legal pad there?

11:12:05 8 A. I believe so.

11:12:06 9 Q. Okay. And look at the -- after the first page, look at the

11:12:11 10 next page. And glance down through there. You had a chance to

11:12:18 11 glance through it generally. And go to the next page. Does it

11:12:42 12 appear to be a listing of the names of horses?

11:12:50 13 A. No.

11:12:54 14 Q. I want to show you from looking at those few pages,

11:13:22 15 actually, it looks like colors of paint, doesn't it?

11:13:25 16 A. Yes, sir.

11:13:26 17 Q. I'm looking for an e-mail account. I'll get it here in just

11:14:24 18 a second.

11:14:29 19 Now, when you looked at the information and obtained

11:14:37 20 information from e-mail providers on Fernando Garcia, you found

11:14:43 21 that he had one e-mail address and it was Fernie004@.

11:14:50 22 A. Hotmail.

11:14:50 23 Q. Hotmail, correct?

11:14:51 24 A. Yes, sir.

11:14:51 25 Q. And when you looked at the subscriber information, it was

11:14:57 1 his name, Fernando Garcia?

11:14:58 2 A. Yes, sir.

11:15:00 3 Q. And could you determine from that -- did they tell you that

11:15:05 4 he has had -- he's 29 years old. He has had that same e-mail

11:15:10 5 address since he was in high school. Did it show that it goes

11:15:13 6 back a decade or more?

11:15:14 7 A. I believe it does show it goes back.

11:15:16 8 Q. And it's as that same e-mail address with his name.

11:15:19 9 A. Yes, sir.

11:15:27 10 Q. Based on your -- well, I'll do that in a minute. Let's look

11:15:35 11 at you said there were searches that were done, as well, correct?

11:15:39 12 A. Can you be more specific?

11:15:41 13 Q. Were you involved in searches as well as e-mail? Were you

11:15:44 14 also involved in the physical searches where evidence was

11:15:48 15 obtained physically, phones, stuff like that?

11:15:50 16 A. On this case?

11:15:51 17 Q. Yes.

11:15:51 18 A. Yes, sir.

11:15:52 19 Q. Okay. And you know that Fernando Garcia's cellphone was

11:15:58 20 seized from him at the time that he was apprehended in this case.

11:16:02 21 A. I wasn't present when he was apprehended.

11:16:05 22 Q. Okay. Are you aware that his cellphone was taken from him

11:16:08 23 when he was apprehended?

11:16:10 24 A. I wasn't.

11:16:10 25 Q. And you've not seen any of that analysis of his cellphone?

11:16:13 1 A. I don't believe I have.

11:16:14 2 Q. Okay. Are you aware that his laptop computer was seized

11:16:18 3 from him when he was apprehended?

11:16:20 4 A. I wasn't.

11:16:21 5 Q. So you have not seen any analysis of his laptop computer?

11:16:24 6 A. Let me correct. I am aware, yes. I am aware that he was in

11:16:29 7 possession of a laptop or there was a laptop present when he was

11:16:31 8 arrested.

11:16:32 9 Q. Okay. And have you seen any of the analysis of that laptop?

11:16:37 10 A. I believe I have.

11:16:39 11 Q. And from looking at that, you know that the information

11:16:43 12 contained in his laptop goes back quite some period of time.

11:16:47 13 A. It could. I only saw certain stuff.

11:16:51 14 Q. In other words, it doesn't just go back like a week, or a

11:16:54 15 month, or March, or whatever it was. It goes back before that,

11:16:58 16 doesn't it?

11:16:59 17 A. It could. Yes.

11:17:01 18 Q. In other words, and you know the same thing about his

11:17:05 19 cellphone. That cellphone information was retrieved and shows

11:17:08 20 he's had that same cellphone for quite some time.

11:17:11 21 A. My role was specifically e-mail addresses and the arrest of

11:17:15 22 Carlos Nayen. I cannot testify to his cellphone.

11:17:18 23 Q. Okay. And I'm asking if you've actually seen -- as being a

11:17:24 24 case agent for the Laredo office on this case and being involved

11:17:28 25 in investigations as you have, you've actually seen some of the

11:17:35 1 product where his cellphone had been searched and analyzed,
11:17:38 2 haven't you?

11:17:39 3 A. I don't recall seeing his cellphone analysis.

11:17:42 4 Q. Okay. For a person to keep the same e-mail address for more
11:17:51 5 than a decade, that would appear to be inconsistent with what you
11:17:56 6 were talking about this common criminal activity, wouldn't it?

11:17:58 7 A. For that specific e-mail address, yeah.

11:18:00 8 Q. And that's the only e-mail address Fernando Garcia has,
11:18:05 9 isn't it?

11:18:05 10 A. It's the only one that I found.

11:18:06 11 Q. And you're an expert at doing this?

11:18:09 12 A. I haven't been declared as an expert of doing this. I have
11:18:13 13 done in this case every e-mail, but I haven't been sworn in as an
11:18:16 14 expert. But in this case, I've reviewed a lot e-mails and a lot
11:18:20 15 of e-mail accounts.

11:18:21 16 Q. Certainly you have more expertise than we do as far as how
11:18:24 17 it was done here. And so, you know he's had that same e-mail
11:18:27 18 address, one of them, for more than a decade, correct?

11:18:30 19 A. For that one.

11:18:32 20 Q. As you said that would be inconsistent based on your normal
11:18:35 21 expectation of what someone involved in a crime would do.

11:18:39 22 A. I would.

11:18:40 23 Q. Likewise, keeping the same laptop would be inconsistent,
11:18:43 24 won't it?

11:18:44 25 A. I wouldn't say inconsistent. Many people have multiple

11:18:49 1 laptops, multiple e-mail addresses, multiple phones, and they
11:18:53 2 don't use that specifically for something bad or dirty.

11:18:58 3 Q. Right.

11:18:59 4 A. Or they've had an e-mail address or a phone for a long
11:19:03 5 period of time prior to getting involved in bad stuff or illegal
11:19:07 6 activity.

11:19:07 7 Q. Sure. And, again, bringing it back to Fernando Garcia,
11:19:12 8 which is the only one I care about.

11:19:14 9 A. That's fine.

11:19:15 10 Q. You know, he's used the same e-mail address and all the
11:19:18 11 e-mails you have here that you are attributing to him came from
11:19:21 12 his e-mail address.

11:19:22 13 MR. GARDNER: Your Honor, we object to the form of the
11:19:24 14 question, which is not a question.

11:19:28 15 MR. WOMACK: It was. I laid the predicate and said, is
11:19:30 16 that true?

11:19:34 17 THE COURT: Finish it up with, is that true?

11:19:38 18 Q. (BY MR. WOMACK) That's true, isn't it?

11:19:39 19 A. I'm sorry, what? Can you repeat the question?

11:19:43 20 Q. That happens.

11:19:45 21 From your investigation, you know that Fernando Garcia
11:19:50 22 has used the one e-mail address for more than a decade, correct?

11:19:54 23 A. I'd have to look back, but it says it on the paperwork. And
11:20:00 24 I, off the top of my head, I cannot remember exactly when he
11:20:03 25 opened it up.

11:20:04 1 Q. But you know it's been several years?

11:20:07 2 A. I believe it has.

11:20:08 3 Q. And all the e-mails that you are attributing to him, the

11:20:13 4 ones that we've seen between him and Papalotes and I forget,

11:20:19 5 horse.quarter, and all these other things, those were all using

11:20:23 6 that e-mail address, aren't they, for Fernando Garcia?

11:20:25 7 A. From what we talked about, correct. Yes.

11:20:27 8 Q. Okay. And the laptop that was seized from him, to your

11:20:38 9 knowledge, is the only laptop that's been seized from him,

11:20:41 10 correct?

11:20:42 11 A. To the best of my knowledge, yes.

11:20:43 12 Q. And that laptop has information and data going back quite

11:20:50 13 some period of time before this investigation.

11:20:53 14 MR. GARDNER: Your Honor, he's already asked this

11:20:54 15 question. Repetitive at this point.

11:20:57 16 THE COURT: He has indicated he doesn't know.

11:21:01 17 MR. WOMACK: I think he said he did know. He's

11:21:04 18 actually seen on the laptop, he'd seen some information that came

11:21:06 19 out of the laptop. I want to make sure that's clear for the

11:21:09 20 jury.

11:21:09 21 Q. (BY MR. WOMACK) On the laptop, you know he's used --

11:21:12 22 Fernando Garcia has used one laptop that goes back before this

11:21:15 23 investigation.

11:21:17 24 A. I don't know how long your client's had that laptop. Off

11:21:21 25 the top of my head, I don't know.

11:21:22 1 Q. But there was only one laptop seized from him.

11:21:25 2 A. If he -- I don't know off the top of my head. I believe

11:21:30 3 there was only one laptop, but that doesn't mean that's the only

11:21:33 4 laptop he had.

11:21:33 5 Q. And from having looked at the information taken from that

11:21:37 6 laptop, you know it has information that goes back even before

11:21:40 7 this investigation.

11:21:41 8 MR. GARDNER: Your Honor, at this point, asked and

11:21:43 9 answered. Third time, I believe.

11:21:45 10 MR. WOMACK: We're trying to get a straight answer,

11:21:46 11 your Honor.

11:21:48 12 THE COURT: Now, counsel.

11:21:50 13 MR. WOMACK: I mean, I'm not saying he's being

11:21:52 14 difficult. He's trying to recollect things.

11:21:54 15 THE COURT: He's trying to get an answer would be fine.

11:21:57 16 MR. WOMACK: Yes, sir. Trying to get an answer. Thank

11:21:57 17 you.

11:21:57 18 THE COURT: Read back the question to the witness,

11:22:11 19 please.

11:22:11 20 (Last question read back.)

11:22:12 21 THE COURT: Can you answer that?

11:22:15 22 A. If it went back before, I believe 2009, then yes, it might

11:22:22 23 be on his laptop from before the investigation started.

11:22:27 24 Q. (BY MR. WOMACK) It certainly goes back before March of 2012

11:22:31 25 when someone sent an e-mail, get rid of everything. It goes back

11:22:35 1 before that, doesn't it?

11:22:36 2 A. Yes.

11:22:37 3 Q. And that's an indication that when Fernando Garcia got an
11:22:42 4 e-mail that says, get rid of your phone, get rid of everything,
11:22:45 5 he didn't do that, did he?

11:22:47 6 A. No.

11:22:51 7 Q. And that would be inconsistent with a coconspirator in a
11:22:55 8 criminal case who is being told, get rid of everything. If you
11:22:58 9 keep everything, that's inconsistent with that, from your
11:23:01 10 experience?

11:23:02 11 A. Sometimes people don't listen to orders.

11:23:05 12 Q. Okay. And you know that Fernando Garcia has continued to
11:23:20 13 use his one e-mail address up until today. You know that, don't
11:23:25 14 you?

11:23:25 15 A. When I send e-mail search warrant, I don't know what happens
11:23:29 16 afterwards. He might use it. He might not. I don't know. I
11:23:34 17 couldn't -- I could tell you, but it would take some time.

11:23:38 18 Q. He was arrested in June of 2012. His family hired me, I
11:23:42 19 think, that evening or the next day. You have seen the e-mails
11:23:47 20 since June of 2012 between Fernando and me, haven't you?

11:23:53 21 A. Between Fernando and you?

11:23:55 22 Q. And me.

11:23:55 23 A. I'm.

11:23:56 24 Q. Guy.Womack@usa.net. That's my e-mail address. The only one
11:24:01 25 I've got.

11:24:02 1 A. Okay.

11:24:02 2 Q. Have you seen e-mail traffic between Fernando to and from

11:24:06 3 me?

11:24:07 4 A. Like I said, there's a lot of e-mails and I could have, and

11:24:11 5 they might have spanned after he was arrested.

11:24:14 6 Q. I understand. And when you see e-mail between a attorney

11:24:18 7 and client, you don't use that information, do you?

11:24:20 8 A. No. I don't read it.

11:24:21 9 Q. And I'm not suggesting you're doing anything wrong. I just

11:24:24 10 want to establish that you know because they've been shown to me,

11:24:27 11 y'all actually have e-mails of him since he hired me. He still

11:24:32 12 has the same address. You know that.

11:24:34 13 A. Yes.

11:24:35 14 Q. Okay. Now, you talk about deleting e-mails. You delete

11:25:00 15 e-mails, don't you?

11:25:00 16 A. Occasionally. I do have a lot in my in box, but I do.

11:25:03 17 Q. And when you delete an e-mail address, it could mean that

11:25:07 18 you're just done with that information, correct?

11:25:09 19 A. The address or the e-mail?

11:25:12 20 Q. If you delete an e-mail, if you delete an e-mail, that could

11:25:15 21 mean you're done with that e-mail, correct?

11:25:18 22 A. It could mean you're done with it, or could mean you don't

11:25:20 23 want to see it anymore or you don't want anyone else to see it.

11:25:23 24 Q. And you don't want it to fill up your in box?

11:25:26 25 A. Yes. You only get a certain amount of space provided from

11:25:29 1 the provider.

11:25:31 2 Q. Right. And so, it would be very common in your experience

11:25:34 3 for people to open e-mails and then, delete some of them?

11:25:37 4 A. Correct. They can do that.

11:25:38 5 Q. And if they think they might need it again for some reason,

11:25:44 6 either for the address or the information, they may keep that?

11:25:46 7 A. Yeah. They can just not delete it and it will stay there

11:25:49 8 forever.

11:25:50 9 Q. Okay. 358E, like echo, were the e-mails from

11:26:12 10 horses.quarter.racing@hotmail.com. Do you know who that is?

11:26:17 11 A. Yes.

11:26:18 12 Q. Who is that?

11:26:19 13 A. That's going to be Victor Lopez, and I believe Victor Lopez

11:26:24 14 and Carlos Nayen both use that e-mail address.

11:26:26 15 Q. Okay. From looking at -- and I don't know what page this

11:26:53 16 is, but it's this Exhibit 358E has two red tabs?

11:26:58 17 A. Uh-huh.

11:26:59 18 Q. Do you see that?

11:26:59 19 A. Yes, sir.

11:27:01 20 Q. That someone put there. That's marking certain pages?

11:27:05 21 MR. GARDNER: That was me, Mr. Womack.

11:27:07 22 Q. (BY MR. WOMACK) And I bet it was Mr. Gardner did it. I'm

11:27:10 23 going to look at the first half in the e-mail string that's on

11:27:12 24 there.

11:27:12 25 A. Okay.

11:27:13 1 Q. I'm going to show it to you on the string. Now, this is a
11:27:16 2 translation of the e-mail string; is that right?

11:27:20 3 A. One of two translations, but it is. Yes. It's translated
11:27:23 4 into English.

11:27:24 5 Q. Okay. And do you speak Spanish?

11:27:27 6 A. Not very well.

11:27:28 7 Q. Okay. Join the crowd.

11:27:31 8 And so, the translation, though, we're assuming was
11:27:35 9 done properly, don't you think?

11:27:37 10 MR. GARDNER: Your Honor, I'm going to object.

11:27:39 11 Translation's been available for objections to the defense for
11:27:42 12 over a month. That is misleading.

11:27:44 13 MR. WOMACK: Your Honor, I'm not objecting. I'm asking
11:27:46 14 the witness -- I want agreement that this is a real translation.
11:27:49 15 I'm not challenging the translation.

11:27:50 16 THE COURT: Well, tell the jury it's a real translation
11:27:53 17 pursuant to my order, and the lawyers according to my order had a
11:27:58 18 reasonable time to object to any of the translations. Let's go
11:28:01 19 on.

11:28:02 20 MR. WOMACK: Thank you, your Honor.

11:28:03 21 Q. (BY MR. WOMACK) From reading this e-mail, it appears that
11:28:14 22 Fernando Garcia is trying to get information about where to
11:28:16 23 deliver or where he can pick up registration. Do you know that
11:28:21 24 from reading the e-mails?

11:28:22 25 A. Can you point to the e-mail? The top one.

11:28:28 1 Q. Well, the top one -- the top e-mail is from somebody to
11:28:31 2 Fernando; is that right?

11:28:33 3 A. You flip back the page, I'll tell you who it's from.

11:28:35 4 Q. Oh, okay. So it's on the other page?

11:28:39 5 A. Right. Yeah. No, keep going.

11:28:43 6 Q. Okay. This page says the word "translation."

11:28:46 7 A. Correct.

11:28:46 8 Q. The page before looks like it has Spanish.

11:28:51 9 A. Correct.

11:28:52 10 Q. So I guess these two go together, don't they? One's
11:28:55 11 translation of the other?

11:28:56 12 A. Yes.

11:28:56 13 Q. Okay. Thank you. Oh, okay. And two pages back has this
11:29:02 14 gray box that says, e-mail participants?

11:29:04 15 A. Yes, sir.

11:29:05 16 Q. And so, the sender.

11:29:11 17 A. It says --

11:29:12 18 Q. From is horses.quarter.racing and a friendly name Javier
11:29:18 19 Lopez?

11:29:18 20 A. Correct.

11:29:19 21 Q. And it's to Fernie004, Fernando Garcia?

11:29:22 22 A. Correct.

11:29:23 23 Q. Okay. And this was on October 17, 2012?

11:29:28 24 A. That's when I reviewed it.

11:29:31 25 Q. Oh.

11:29:31 1 A. Or either -- it's either when I reviewed it or it's when it
11:29:35 2 was uploaded into that Cool Miner machine.

11:29:38 3 Q. I gotcha. Okay. So the e-mail was sent on April 4th, 2012
11:29:43 4 at 5:24 in the morning.

11:29:45 5 A. Correct.

11:29:46 6 Q. Thank you. And it would appear like most e-mails that as
11:29:56 7 you look at this string of e-mails, the bottom e-mail is the
11:30:01 8 oldest one. And then, the replies or subsequent e-mails go up
11:30:05 9 the page in order, didn't they?

11:30:07 10 A. That's correct.

11:30:08 11 Q. And if I flip to the next page will have this same string of
11:30:16 12 e-mails in English?

11:30:17 13 A. Correct.

11:30:17 14 Q. Okay. And so, the first e-mail of this string on April 2nd
11:30:27 15 is, what's up Shaman. What you been doing? You have a pin? And
11:30:34 16 the reply -- and that's the morning of April 2nd because we're
11:30:44 17 using a 24-hour clock. So the next morning, 22 hours later,
11:30:49 18 roughly, 22 and a half, Fernando Garcia replies, Huitron says for
11:30:56 19 you to call him.

11:30:57 20 A. Correct.

11:31:02 21 Q. And then, the reply that afternoon, five hours later is,
11:31:13 22 sweetie, if you come by for expenses and some instructions.
11:31:16 23 Please let me know. And Chevo is not answering.

11:31:22 24 And you know from your investigation that Fernando
11:31:24 25 Garcia is involved in representing horse buyers and sellers,

11:31:29 1 training horses, managing horses. He's involved in horse-related
11:31:35 2 activity. You know that?

11:31:36 3 A. Correct.

11:31:37 4 Q. And that much of the evidence in this case deals with paying
11:31:44 5 expenses and costs associated with quarter horse racing?

11:31:51 6 A. Correct.

11:31:51 7 Q. Okay. And then, after getting the e-mail from
11:32:02 8 horses.quarter, later that evening, Fernando Garcia replies,
11:32:07 9 where do I go? When? And this is to come by for expenses and
11:32:12 10 instructions, correct?

11:32:13 11 A. Yeah. Correct.

11:32:19 12 Q. And then, the reply to that e-mail, which I presume we
11:32:31 13 believe is at April 4th at 5:24 in the morning is the top e-mail,
11:32:36 14 which says, over here where I am, sweetie, on the border. So as
11:32:40 15 to give you a phone and some instructions. Sweetie, I need you
11:32:45 16 to send me all of the registrations. I'm being asked for them.
11:32:49 17 Please let me know what's up. Correct?

11:32:53 18 A. Yes. That that's --

11:32:57 19 Q. Now, from your investigation and your participation in this
11:32:59 20 investigation, you know that registrations in this case can refer
11:33:03 21 to the certificates of registration for quarter horses?

11:33:07 22 A. Yeah. From what I understand on the registrations, it says
11:33:10 23 the lineage of the horse and who owns it.

11:33:15 24 Q. And it seemed to be important in the racing business to know
11:33:18 25 this or to prove that?

11:33:19 1 A. Yeah. It's very important.

11:33:20 2 Q. Okay. Now, and, again, the second tab on this exhibit,

11:33:29 3 which is 358 Echo -- one second. If I'm doing it correctly, it

11:33:43 4 appears that this is an e-mail dated 3-31-12 and here, they're

11:33:52 5 not using a 24-hour clock. It's 4:33 p.m., correct?

11:33:55 6 A. Yes, sir.

11:33:56 7 Q. And that's, again, from horses.quarter to Fernando Garcia?

11:34:00 8 A. Yes, sir.

11:34:01 9 Q. The next page is in Spanish but the second page after it.

11:34:17 10 Now, the top, it has an address for the Ibarra Ranch in Laredo?

11:34:25 11 A. Yes, sir.

11:34:33 12 Q. And this is an e-mail from this quarter.horses saying,

11:34:38 13 Shaman told me you should toss your cell and destroy everything

11:34:41 14 else that was theirs. Get rid of your face on your computer.

11:34:50 15 And that's a message that was sent to Fernando Garcia?

11:34:54 16 A. From the best of my knowledge, that's what it said when I

11:34:57 17 received it. It's sent from and to.

11:35:00 18 Q. But in reply -- make sure I'm not confusing this. Okay.

11:35:17 19 I'm sorry. I get out of order.

11:35:20 20 The reply from the earlier e-mail from Fernando Garcia

11:35:26 21 to horses.quarter was okay, fine. Send me the address to which I

11:35:30 22 should send you the registrations. Things pending. That's the

11:35:35 23 e-mail from Fernando to horses.quarter.

11:35:40 24 A. Yes. It's from Fernando to horses.quarter.

11:35:43 25 Q. And that's the message?

11:35:43 1 A. That's how I read it.

11:35:45 2 Q. And then, the reply was, Laredo ranch Ibarra with an address

11:35:51 3 and toss your cell, destroy everything, right?

11:35:55 4 A. Yes, sir.

11:35:56 5 Q. Which we know wasn't done.

11:35:58 6 A. Correct.

11:36:00 7 Q. 358 Delta or D is the -- these are e-mails. It's a thick

11:36:20 8 stack of them on the account of Fernando Garcia?

11:36:25 9 A. That's correct.

11:36:39 10 Q. And it has e-mails from Papalotes@mcanales.com. Do we know

11:36:54 11 who Papalotes is?

11:36:55 12 A. Yes, sir.

11:36:55 13 Q. Who is that?

11:36:56 14 A. Jose Luis Canales.

11:36:58 15 Q. Okay. And so, if I'm doing it correctly, the first page or

11:37:10 16 where the first tab is, it looks like four tabs on this exhibit,

11:37:14 17 correct?

11:37:14 18 A. I could only see three and a half.

11:37:16 19 Q. Well, yeah. Okay. So there's three and there's a fourth

11:37:18 20 tab that's folded or something?

11:37:20 21 A. Oh, yes, sir.

11:37:20 22 Q. Okay. And the first tab is an e-mail from Fernando Garcia

11:37:36 23 to Jane Eckert?

11:37:37 24 A. Yes, sir.

11:37:40 25 Q. And you don't know Jane Eckert, do you?

11:37:42 1 A. I've never met her.

11:37:43 2 Q. Okay. But you know she's with Heritage Place. Did you know

11:37:48 3 that?

11:37:48 4 A. Yeah. I knew that.

11:37:49 5 Q. Okay. And that's a horse auction?

11:37:52 6 A. Yes, sir.

11:37:53 7 Q. In Oklahoma City?

11:37:54 8 A. Yes, sir.

11:37:55 9 Q. Okay. And so, this is an e-mail from Fernando to Jane

11:37:59 10 Eckert on March 2nd, 2012?

11:38:03 11 A. Yes, sir.

11:38:04 12 Q. At about 11:00 at night?

11:38:06 13 A. Yes, sir.

11:38:11 14 Q. And what had happened here is that someone named Papalotes

11:38:25 15 -- you told us his name. I forgot it -- was Jose somebody?

11:38:27 16 A. Luis Canales.

11:38:28 17 Q. Jose Luis Canales had sent to Fernando Garcia deposit slips

11:38:34 18 totaling \$51,700, correct?

11:38:38 19 A. Yes, sir.

11:38:38 20 Q. And he has a little e-mail string here that says from

11:38:47 21 cnb@mcanales.com, sent that day, 20 minutes earlier to Jose Luis.

11:38:56 22 That says, subject, attached images, correct?

11:39:01 23 A. Yes, sir.

11:39:02 24 Q. And the attached images are deposit slips into a bank

11:39:06 25 account with the Bank of America?

11:39:07 1 A. Yes, sir.

11:39:09 2 Q. And if you add them up, they total \$51,700?

11:39:15 3 A. Correct.

11:39:22 4 Q. And then, on March 2nd, we have an e-mail from Jane Eckert

11:39:35 5 to Fernando Garcia and a carbon copy sent to Jeff Tebow, also

11:39:42 6 with Heritage Place, correct?

11:39:44 7 A. Yes, sir.

11:39:46 8 Q. And that e-mail asks Fernando, did you ever hear from Carlos

11:39:53 9 when the balance will be paid on these horses? We're coming up

11:39:57 10 on two months past the sale. Jeff and the board are getting

11:40:00 11 really impatient. And that was Jane Eckert with Heritage Place?

11:40:05 12 A. Yes, sir.

11:40:09 13 Q. And the earlier e-mail from her to Fernando, carbon copy

11:40:16 14 Jeff Tebow, and this is a February 23rd, 2012, says Fernando, I

11:40:21 15 show a payment of \$228,700, which leaves \$51,700 still owed. Can

11:40:28 16 you tell me when that will be paid? Thanks.

11:40:32 17 A. Yes, sir.

11:40:33 18 Q. And you know from this e-mail string that what Fernando did

11:40:37 19 is he received these deposit slips from Papalotes and forwarded

11:40:44 20 them to Jane Eckert showing that here, it's been paid?

11:40:47 21 A. Correct.

11:40:54 22 Q. Sir, I have no further questions. Thank you.

11:40:57 23 THE COURT: Mr. Esper.

11:40:57 24

11:40:58 25

11:40:58 1 CROSS-EXAMINATION

11:40:58 2 BY MR. ESPER:

11:41:01 3 Q. Very briefly, your Honor.

11:41:03 4 Mr. Johnston, in the course of your investigation, do

11:41:38 5 you know -- and if you don't, simply say so -- whether Mr.

11:41:41 6 Huitron, "Chevo" Huitron is, in fact, literate?

11:41:43 7 A. I do not know that.

11:41:45 8 Q. Did you search for any e-mails or e-mail accounts belonging

11:41:48 9 to "Chevo" Huitron?

11:41:51 10 A. I didn't find any.

11:41:52 11 Q. You didn't find any?

11:41:53 12 A. No.

11:41:53 13 Q. Okay. Would it be fair to say that by you -- but you did

11:41:57 14 search?

11:41:57 15 A. I did.

11:41:58 16 Q. Okay. And because you didn't find anything, it would be

11:42:01 17 safe to say that he didn't have any.

11:42:03 18 A. Or I didn't find any.

11:42:06 19 Q. I think you're pretty good at your job, aren't you, sir?

11:42:09 20 A. I think I'm pretty good at my job.

11:42:11 21 Q. Okay. So you didn't find any for Mr. "Chevo" Huitron,

11:42:15 22 correct?

11:42:15 23 A. I did not.

11:42:16 24 Q. Okay. Now, with respect to those two e-mails that we've

11:42:22 25 seen already about eight times, I'm not going to show them to you

11:42:25 1 again. But basically, there are two e-mail accounts. One is
11:42:28 2 horses.quarter.racing and the other is Fernie004@hotmail.
11:42:34 3 There's apparently an e-mail sent about 8:23 in the morning that
11:42:40 4 says, Huitron says to call. Do you recall that?
11:42:44 5 A. Yeah. Yes, sir.
11:42:45 6 Q. Now, that's, of course, not a e-mail from "Chevo" Huitron.
11:42:50 7 It's between two other e-mail accounts?
11:42:52 8 A. Correct.
11:42:52 9 Q. But basically he's saying, call me, meaning call on the
11:42:55 10 phone?
11:42:55 11 A. Correct.
11:42:56 12 Q. Would that be fair to assume?
11:42:57 13 A. Yes, sir.
11:42:58 14 Q. Okay. Then about, I don't know, seems like about five hours
11:43:02 15 later, there's another e-mail correspondence between these two
11:43:09 16 e-mail accounts and it says, Chevo's not answering, correct?
11:43:12 17 A. Correct.
11:43:13 18 Q. Okay. And he's not answering the phone. Right?
11:43:16 19 A. That's what --
11:43:18 20 Q. And that's the only reference in all these e-mails that you
11:43:21 21 see to "Chevo" Huitron, correct?
11:43:22 22 A. That's not correct.
11:43:23 23 Q. That's not?
11:43:24 24 A. No.
11:43:24 25 Q. You see some other references to him?

11:43:28 1 A. In that specific string of e-mails or?

11:43:30 2 Q. Not in that specific string of e-mail. Do you see other

11:43:33 3 references to him in other e-mails?

11:43:35 4 A. I have.

11:43:36 5 Q. Okay. But in this string, that's the only two?

11:43:39 6 A. Correct. In that string, that's all I saw.

11:43:41 7 Q. And the ones you've seen referencing him, they don't come

11:43:44 8 from any e-mail account belonging to him.

11:43:47 9 A. They did not.

11:43:48 10 Q. Okay. And do you know -- and if you don't, simply say so --

11:43:53 11 whether he even has a computer to your knowledge?

11:43:56 12 A. I don't know.

11:43:57 13 Q. Okay. Now, when you say a person -- and this may be

11:44:03 14 repetitive and I apologize if it is. People drop cellphones but

11:44:08 15 some people actually keep the same cellphone, correct?

11:44:13 16 A. I've had my cellphone for very long times.

11:44:15 17 Q. Yeah. And do you know -- and if you don't, simply say so --

11:44:18 18 whether or not you made a search to determine whether Mr. "Chevo"

11:44:22 19 Huitron has a cellphone?

11:44:23 20 A. I didn't.

11:44:24 21 Q. You did not?

11:44:24 22 A. Particularly myself, I did not.

11:44:27 23 Q. Okay. That was done by some other law enforcement agent,

11:44:30 24 correct?

11:44:30 25 A. It was a very big case.

11:44:31 1 Q. I understand. I think the jury understands that, too. No
11:44:36 2 further questions.

11:44:36 3 THE COURT: Mr. Mayr.

11:44:38 4 MR. MAYR: Thank you, your Honor.

11:44:39 5 CROSS-EXAMINATION

11:44:39 6 BY MR. MAYR:

11:44:44 7 Q. Agent Johnston, I'm going to ask you a similar question. Do
11:44:47 8 you know if my client Jesus Huitron, whether he has an e-mail
11:44:50 9 account?

11:44:51 10 A. I do not know.

11:44:52 11 Q. Okay. Did you search to find if he has an e-mail account?

11:44:57 12 A. I didn't find any on the e-mails that I had in response.

11:45:01 13 And, again, I didn't search for his.

11:45:04 14 Q. Would it be possible that he doesn't have an e-mail account?

11:45:07 15 A. That's correct.

11:45:08 16 Q. Okay. Now, we did see some e-mails -- let me ask you this.

11:45:14 17 In going through all these 16,000 e-mails. Did you ever see any
11:45:18 18 reference to Jesus Huitron?

11:45:21 19 A. I didn't.

11:45:23 20 Q. Did not. Okay. Government's Exhibit 71. There appears to
11:45:49 21 be some different writing, different addresses. Nothing that
11:45:54 22 shows any sort of consistent trainer -- there's nothing
11:45:59 23 consistent about this piece of paper. It's just sort of like a
11:46:01 24 scratch piece of paper with different things written on it. Is
11:46:04 25 that fair to say?

11:46:06 1 A. Can you repeat that question?

11:46:07 2 Q. Sure. That was my fault. I'm sorry.

11:46:10 3 Let me just show it to you so you could see it more

11:46:14 4 carefully. It doesn't appear that this first page is talking

11:46:20 5 strictly about horses, or painting, or any sort of -- one

11:46:26 6 particular topic; is that right?

11:46:37 7 A. No. There's e-mail addresses, phone numbers, there's a link

11:46:43 8 to a painting, user name, txusa_huitronpainting might be for a

11:46:52 9 computer or something. This is -- but I don't see anything

11:46:54 10 besides Huitron Painting that would say it's -- I don't see

11:46:59 11 anything on here that has anything to do with horses besides the

11:47:04 12 associated e-mail addresses.

11:47:05 13 Q. Okay. Fair enough.

11:47:06 14 Now, as far as the rest of 71, Mr. Womack asked you

11:47:14 15 about this, but I'd just like to show it. The second page, do

11:47:24 16 you see something like it says -- there's an address 2820 Amber

11:47:29 17 Valley Lane, right?

11:47:30 18 A. Yes, sir.

11:47:30 19 Q. Paint interior?

11:47:32 20 A. Yes, sir.

11:47:32 21 Q. Date. There's a date right next to it right there, 4-8?

11:47:39 22 A. No. That looks like it's either a date or how much hours

11:47:42 23 they spent there at the facility.

11:47:46 24 Q. Fair enough. Or time. Sure. And we're not going to go

11:47:49 25 through each one of these, but we've got one, two, three, four,

11:48:02 1 five, six, seven, eight, nine, ten, eleven, twelve, thirteen,
11:48:18 2 fourteen, fifteen, sixteen, seventeen, eighteen, nineteen,
11:48:25 3 twenty, twenty-one, twenty-two pages with identical inscriptions,
11:48:32 4 if you would, right?
11:48:35 5 A. Looks like a ledger.
11:48:36 6 Q. Right.
11:48:37 7 A. Inscriptions, I wouldn't say that. But it looks like a
11:48:41 8 ledger.
11:48:42 9 Q. Related to painting?
11:48:43 10 A. Painting.
11:48:43 11 Q. Okay. I have no further questions for this witness at this
11:48:54 12 time, your Honor.
11:48:54 13 THE COURT: Any direct?
11:48:55 14 MR. GARDNER: Yes, your Honor.
11:48:57 15 THE COURT: About how long?
11:49:00 16 MR. GARDNER: It might go past the noon hour, your
11:49:02 17 Honor.
11:49:02 18 THE COURT: Okay. Mark your place. Members of the
11:49:04 19 jury, I'm going to let you eat today. May not get barbecue, but
11:49:09 20 times are hard. Remember the instructions. Be ready to work at
11:49:13 21 1:20.
11:49:52 22 (Jury not present.)
11:49:58 23 THE COURT: You may be seated. Bring Mr. Guadalajara
11:50:01 24 back in.
11:50:01 25 MR. FINN: Judge, while they're doing that, can I bring

11:50:03 1 something up quickly?

11:50:04 2 THE COURT: Sure. You may step down, sir.

11:50:07 3 MR. FINN: The government was kind enough to provide me

11:50:09 4 with about ten pages of documents regarding seizure of various

11:50:12 5 evidence at my client's farm, at his house in Dallas, et cetera.

11:50:17 6 But at the bottom of every single page, the name of the agent

11:50:21 7 that it was received by is blacked out or redacted. I've been

11:50:26 8 requesting that the government give me an unredacted copy of

11:50:29 9 these documents so I know who to question if I have any

11:50:33 10 questions. As it stands now, I don't know who to ask the

11:50:36 11 questions of.

11:50:37 12 Mr. Gardner's position is, why do I need to know?

11:50:40 13 Because we've stipulated to the evidence. That is true. But I

11:50:44 14 still need to know who these agents are so I could ask

11:50:46 15 intelligent questions and not waste everyone's time by asking

11:50:50 16 every single witness, are you the one that prepared this? I

11:50:53 17 think it's a reasonable request.

11:50:56 18 MR. GARDNER: Your Honor, in the stipulation, the only

11:50:58 19 seizing agent that Mr. Finn signed, the only seizing agent is

11:51:03 20 Santiago Moya.

11:51:05 21 MR. FINN: So Santiago Moya is the only person in the

11:51:08 22 bottom of these?

11:51:10 23 MR. GARDNER: Yes. Who was released based on your

11:51:12 24 agreement to stipulate.

11:51:14 25 MR. FINN: Okay. Well, thank you.

11:51:18 1 THE COURT: You're welcome. Glad to accommodate.

11:51:21 2 Bring Mr. Guadalajara in.

11:52:13 3 Mr. Guadalajara, they've got some additional questions

11:52:15 4 they want to ask you. Remember you're still under oath to tell

11:52:18 5 the truth. Do you understand?

11:52:19 6 THE WITNESS: Yes, sir.

11:52:19 7 THE COURT: All right.

11:52:21 8 RE-CROSS EXAMINATION

11:52:21 9 BY MR. ESPER:

11:52:33 10 Q. Mr. Guadalajara, you testified that you were interviewed by

11:52:39 11 Agent Lawson and there were some other agents in the room with

11:52:42 12 you back in November, about a year and a half ago.

11:52:47 13 A. Yes, sir.

11:52:47 14 Q. Here in San Antone?

11:52:49 15 A. Yes, sir.

11:52:50 16 Q. And do you recognize any of the other agents that were in

11:52:52 17 the room?

11:52:52 18 A. Yes, sir.

11:52:53 19 THE COURT: We're not in San Antonio.

11:52:56 20 MR. ESPER: Pardon me?

11:52:56 21 THE COURT: We're not in San Antonio. The interview

11:52:58 22 may have been in San Antonio.

11:52:59 23 Q. (BY MR. ESPER) I'm sorry, the interview was in San Antonio?

11:53:03 24 A. Correct.

11:53:03 25 Q. Not in Austin?

11:53:04 1 A. Not in Austin.

11:53:05 2 Q. And do you recognize any of the other agents in this

11:53:07 3 courtroom that were present in that room?

11:53:09 4 A. Yes, sir.

11:53:09 5 Q. Who?

11:53:10 6 A. Those two.

11:53:11 7 Q. Okay. That's Mr. Lawson in the back, correct?

11:53:13 8 A. Yes.

11:53:14 9 Q. This is Mr. Pennington, correct?

11:53:16 10 A. Yes, sir.

11:53:16 11 Q. There were some other agents there, correct?

11:53:18 12 A. Yes, sir.

11:53:19 13 Q. Okay. You just don't see them here in the courtroom?

11:53:24 14 A. No, sir, now.

11:53:32 15 Q. Now, Mr. Guadalajara, this is a report that you've never

11:53:34 16 seen, correct?

11:53:35 17 A. Yes, sir.

11:53:36 18 Q. You have or have not seen?

11:53:37 19 A. No. I never seen that one.

11:53:39 20 Q. The question was clumsily asked. You've never seen this

11:53:44 21 report, have you?

11:53:45 22 A. No, sir.

11:53:45 23 Q. But it's got a date of November 1st, 2011 and basically it

11:53:50 24 says that you're there. This is your name, correct?

11:53:52 25 A. Yes, sir.

11:53:53 1 Q. And these are the agents who are interviewing you and it's
11:53:55 2 about a two- or three-page report. I'm just showing this to you,
11:54:01 3 okay? Now, I'm going to direct your attention to this one little
11:54:03 4 paragraph here that has a pink star and it's highlighted. Can
11:54:08 5 you read that?

11:54:09 6 A. Cuellar has several horses in Mexico and in the United
11:54:13 7 States. Mamito also owned horses and had a ranch in Reynosa,
11:54:19 8 Tamaulipas. Huitron was a trainer from Austin, Texas who trains
11:54:22 9 Miguel's horses. Guia met Huitron once in Mexico who also have
11:54:30 10 horses in Mexico.

11:54:30 11 Q. Okay. Now, that's what you told them about "Chevo" Huitron?

11:54:33 12 A. Yes, sir.

11:54:34 13 Q. Correct?

11:54:34 14 A. Yes, sir.

11:54:35 15 Q. Now, you testified on cross-examination -- I mean, on direct
11:54:40 16 examination that -- and when I asked you on cross-examination,
11:54:43 17 you said you told them a lot of other things about Mr. "Chevo"
11:54:47 18 Huitron, correct?

11:54:48 19 A. Yes, sir.

11:54:49 20 Q. But that's not -- but in this report, that's all that is
11:54:53 21 reported by the agents as you're telling them, correct?

11:54:57 22 A. Yes, sir.

11:54:57 23 Q. So when I show you this report, that statement right here is
11:55:04 24 not totally consistent with what you testified to here in court,
11:55:08 25 is it?

11:55:08 1 A. Yes, sir.

11:55:09 2 Q. It's not accurate. Is that what you're saying?

11:55:12 3 A. No, sir. It's not accurate.

11:55:14 4 Q. It's not accurate?

11:55:15 5 A. Yes, sir.

11:55:16 6 Q. Okay. That's all I have, your Honor.

11:55:21 7 THE COURT: Do you wish any questions?

11:55:23 8 MR. GARDNER: No, your Honor.

11:55:25 9 MR. ESPER: Your Honor, I would, for the record, renew

11:55:27 10 my request to cross-examine him on that issue, your Honor.

11:55:33 11 THE COURT: Is the information contained in the report

11:55:37 12 not true?

11:55:40 13 THE WITNESS: It was true there.

11:55:43 14 THE COURT: So it's just not complete as to what you

11:55:46 15 say you've told the agents.

11:55:48 16 THE WITNESS: Yes, sir.

11:55:49 17 THE COURT: The objection remains overruled. We're in

11:55:53 18 recess until 1:20.

11:56:46 19 (Lunch recess.)

13:21:57 20 (Jury present.)

13:22:34 21 THE COURT: Members of the jury, since you left before

13:22:40 22 noon and until the present time, has anybody attempted to talk to

13:22:44 23 you about this case?

13:22:45 24 JURORS: No.

13:22:46 25 THE COURT: Have you talked to anyone about the case?

13:22:48 1 JURORS: No.

13:22:49 2 THE COURT: And have you learned anything at all about

13:22:50 3 the case, outside the presence of each other in this courtroom?

13:22:53 4 JURORS: No.

13:22:54 5 THE COURT: I didn't get the answer.

13:23:06 6 THE JUROR: No, sir. Too quiet.

13:23:09 7 THE COURT: It's a blessing sometimes.

13:23:13 8 All right. Mr. Johnston, you understand you're still

13:23:15 9 under oath?

13:23:16 10 THE WITNESS: Yes, sir.

13:23:16 11 THE COURT: You may proceed.

13:23:19 12 RE-DIRECT EXAMINATION

13:23:19 13 BY MR. GARDNER:

13:23:21 14 Q. Special Agent Johnston, before lunch, you were obviously

13:23:23 15 questioned on various -- let's just go down on what Mr. Finn

13:23:25 16 started about.

13:23:26 17 Do you often find people involved in criminal

13:23:28 18 activities with more than one phone?

13:23:29 19 A. Yes, sir.

13:23:30 20 Q. And would you kind of explain to the jury -- let's use Mr.

13:23:35 21 Finn's example of a person with a phone for many years. What do

13:23:39 22 they use that phone for?

13:23:41 23 A. General conversation, friends, family.

13:23:44 24 Q. And do they, I'll say, cross-pollinate with criminal

13:23:49 25 activity?

13:23:49 1 A. No. Usually from what I've seen in the past, they'll have a
13:23:52 2 work phone. And when I say work phone, I mean a phone that
13:23:55 3 they're going to use for criminal activity. And they'll have a
13:23:57 4 phone that they use for friends, family, coworkers.

13:24:03 5 Q. I'm turning to what Mr. Womack talked to you about. Here in
13:24:12 6 Government's Exhibit 358E. E-mail, April 4th, 2012, 5:24 a.m.
13:24:24 7 Mr. Womack talked to you about, I need you to send me all the
13:24:28 8 registrations on the border. Mr. Womack gave you one
13:24:32 9 interpretation that he was only asking about horse business.

13:24:41 10 Based on your investigation in this case, do you have
13:24:43 11 another interpretation?

13:24:45 12 A. Yes. I believe that the ownership, the true owners were
13:24:49 13 asking for the registration back for the horses.

13:24:51 14 Q. Okay. And is that significant in conjunction with the date?

13:24:57 15 A. Yes. That date is four or five days following the Los
13:25:06 16 Alamitos law enforcement action.

13:25:11 17 Q. And Mr. Womack went into a long series of questions about
13:25:18 18 Fernando Garcia having the same computer being inconsistent.
13:25:23 19 Here, I'm showing you an e-mail dated 4-5 of '12 at 12:41. Does
13:25:33 20 it indicate here at least he was conducting consistent activity
13:25:36 21 based on your opinion of other investigations?

13:25:38 22 A. Yeah. He writes down here, I'll get a new one soon and add
13:25:43 23 you and by add you, he means has BlackBerry. You have to add
13:25:47 24 somebody prior to making contact with them. They have to accept
13:25:49 25 you. It's kind of like instant message or Facebook friend.

13:25:53 1 Q. And that's consistent with the other e-mails the jury's seen
13:25:57 2 multiple times?

13:25:58 3 A. Yes, sir.

13:25:58 4 Q. And I believe Mr. Womack showed you that was new were the
13:26:05 5 e-mails from Government's Exhibit 358D, Fernie@hotmail.com, and
13:26:12 6 this is an e-mail from Jane Eckert. Just for the record, date of
13:26:24 7 e-mail is February 23rd, 2012. Shows a payment of \$228,000,
13:26:29 8 which leaves \$51,700 still owed, correct?

13:26:34 9 A. Yes, sir.

13:26:34 10 Q. Then we talk about Carlos. Do you believe that refers to
13:26:38 11 Carlos Nayen?

13:26:38 12 A. Yes, sir. Carlos Nayen.

13:26:39 13 Q. And what Mr. Womack showed you was a series of these bank
13:26:46 14 receipts. Did you have a chance to review those bank receipts
13:26:51 15 over the lunch hour?

13:26:52 16 A. Yes, sir, I did.

13:26:53 17 Q. And would you agree with me that there's eight of them
13:26:57 18 there?

13:26:57 19 A. Yes, sir.

13:26:58 20 Q. And did you have an opportunity to review not only the dates
13:27:01 21 but the times and the amounts?

13:27:03 22 A. Yes, sir.

13:27:04 23 Q. Of those?

13:27:06 24 A. I'm sorry.

13:27:12 25 Q. I'm showing you what has been prepared as Government's

13:27:15 1 Exhibit 422. Is that just a handwritten summary of those
13:27:20 2 particular deposits?

13:27:21 3 A. Correct.

13:27:24 4 Q. Your Honor, I'll offer 422 for demonstrative purposes.

13:27:30 5 THE COURT: 422 is received as a demonstrative exhibit.

13:27:36 6 MR. WOMACK: No objections.

13:27:38 7 Q. (BY MR. GARDNER) And would you agree with me, Special Agent,
13:27:47 8 that these deposits occurred over a three-day time period?

13:27:51 9 A. Yes, sir.

13:27:52 10 Q. And these are the actual time of day of the deposits?

13:27:54 11 A. Yes, sir.

13:27:55 12 Q. And would you agree with me the amount of these deposits are
13:28:00 13 \$9,900?

13:28:01 14 A. Yes, sir.

13:28:01 15 Q. Are any of the deposits over \$10,000?

13:28:03 16 A. No, sir. They are not.

13:28:05 17 Q. In your training and experience, what is that consistent
13:28:09 18 with?

13:28:09 19 A. Structured deposits.

13:28:11 20 Q. And so, whenever you see this e-mail from Mr. Canales sent
13:28:27 21 to Jose Luis and then, forwarded to Fernando and then, following
13:28:35 22 that is forwarded to Jane Eckert, based on the results of the
13:28:44 23 investigation, what does that show you?

13:28:45 24 A. It shows me that Fernando Garcia forwarded structured
13:28:50 25 deposits for payment of horses, which he received from Jose Luis

13:28:54 1 Canales.

13:28:55 2 Q. For payment of horses?

13:28:56 3 A. For payment of horses, correct.

13:28:58 4 Q. And we know that because it's Jane Eckert at Heritage Place?

13:29:01 5 A. Yes, sir.

13:29:01 6 Q. Going back to the e-mail on March 2nd of 2012 from Jane to

13:29:17 7 Fernie, Fernando, I show a payment of \$228,700, which leaves a

13:29:23 8 51,700 still owed. And that 51,7 is what's contained in

13:29:27 9 Government's Exhibit 422?

13:29:29 10 A. Correct.

13:29:30 11 Q. Do you know who paid that amount to Heritage Place?

13:29:36 12 A. Yes, sir.

13:29:37 13 Q. Who was that?

13:29:38 14 A. ADT Petro Servicios.

13:29:44 15 Q. Have you ever heard of any legitimate business that uses the

13:29:48 16 phrase "toss your cell"?

13:29:52 17 A. No, sir. I have not.

13:29:54 18 Q. Toss your cell.

13:29:59 19 Showing you Government's Exhibit 71, Mr. Mayr went over

13:30:05 20 this with you in some detail about the number of pages -- I

13:30:07 21 believe he said 22 -- that is behind this.

13:30:11 22 A. Correct.

13:30:12 23 Q. And all these deal with painting quotes or jobs, correct?

13:30:18 24 A. Yes, sir.

13:30:19 25 Q. So is it consistent that these quotes or jobs are part of

13:30:23 1 the Huitron Homes/Huitron Painting business?

13:30:26 2 A. Yes, sir.

13:30:28 3 Q. That's all I have, your Honor. And I'll tender 422 to the
13:30:46 4 clerk.

13:30:48 5 THE COURT: Mr. Finn.

13:30:49 6 RE-CROSS EXAMINATION

13:30:49 7 BY MR. FINN:

13:30:53 8 Q. Thank you, your Honor. May it please the Court. Members of
13:30:55 9 the jury.

13:30:55 10 Agent, Mr. Gardner just asked you about single phones
13:31:01 11 and multiple phones, and you explained in your experience and
13:31:04 12 training, that a crook or somebody up to no good, criminal
13:31:07 13 activity, may have multiple phones and they may use one phone for
13:31:12 14 calling their husband, their wife, kids, or baby-sitter,
13:31:16 15 personal, legitimate communication, and one or more phones to
13:31:22 16 engage in criminal activity, whether it's money laundering, drug
13:31:25 17 conspiracy, things like that.

13:31:27 18 Do you remember that testimony?

13:31:28 19 A. Yes, sir.

13:31:28 20 Q. And that's fairly common, isn't it?

13:31:31 21 A. Yes, sir. It is.

13:31:32 22 Q. In fact, it happens all the time in your experience, right?

13:31:34 23 A. I wouldn't say all the time, but most of the time, yes, sir.

13:31:37 24 Q. Okay. In many cases that you've investigated over your
13:31:41 25 career -- and how long have you been an agent?

13:31:43 1 A. I've been an agent for a little bit over three years.

13:31:45 2 Q. Okay. And you've received training where, at Quantico?

13:31:50 3 A. Quantico, Virginia, yes.

13:31:52 4 Q. Okay. Let me ask you this. Are you familiar with the fact

13:31:55 5 that there was a raid on Jose Trevino, my client's ranch up in

13:32:00 6 Oklahoma? You know that, right?

13:32:01 7 A. Yes, sir, I do.

13:32:01 8 Q. And they grabbed everything that they could, right?

13:32:04 9 A. I believe they did.

13:32:06 10 Q. Yeah. I mean, they went into cars, they went into trucks,

13:32:10 11 they went into bedrooms. They looked in the attic. They looked

13:32:13 12 in the -- I mean, they went all over that place and grabbed

13:32:17 13 anything and everything that might be relevant evidence, right?

13:32:20 14 A. Yes, sir.

13:32:21 15 Q. And y'all are trained to grab everything in an abundance of

13:32:26 16 caution so you don't leave any evidence behind, correct?

13:32:29 17 A. Yes, sir.

13:32:29 18 Q. For instance, if you guys see a cellphone in the bathroom,

13:32:33 19 you're not going to think, oh, well, maybe it's the wife's or

13:32:36 20 maybe it's the maid's. You're going to grab it and analyze it,

13:32:40 21 correct?

13:32:40 22 A. Yes. As long as the search warrant says we can. I would

13:32:44 23 take it, yes, sir.

13:32:44 24 Q. And the search warrant in this case was broad enough that

13:32:47 25 you could grab pretty much anything, right?

13:32:48 1 A. I didn't read it myself. I was in California but.

13:32:52 2 Q. Would you take my word for it if I said it was pretty broad?

13:32:56 3 A. Yes, sir, I would.

13:32:57 4 Q. And y'all were able to grab not only multiple phones, in

13:33:02 5 fact, every single cellphone that you found, but you also grabbed

13:33:05 6 multiple computers and memory sticks, memory cards, hard drives,

13:33:09 7 things of that nature, correct?

13:33:10 8 A. Yes, sir.

13:33:11 9 Q. And you did the same thing in any vehicles at the location,

13:33:15 10 correct?

13:33:15 11 A. I don't know if they did go inside of vehicles. I think

13:33:19 12 that's a better question for the case agent.

13:33:21 13 Q. If I represent to you that they not only went into the

13:33:24 14 property but they went into the vehicles on the property, that

13:33:28 15 would be normal, right?

13:33:31 16 A. Not -- I won't say normal all the time. But.

13:33:34 17 Q. In this case.

13:33:35 18 A. In this case, if the search warrant had that literature or

13:33:37 19 that wording.

13:33:38 20 Q. Okay. So y'all grabbed every phone that you can find, every

13:33:41 21 computer that you can find, every memory card or memory stick

13:33:44 22 that you can find, and then you do the same thing at my client's

13:33:50 23 residence just outside of Dallas, Texas; is that correct?

13:33:52 24 A. Yes, sir.

13:33:53 25 Q. And in that search, you grabbed every phone, every computer,

13:33:58 1 every memory card, anything and everything that could possibly be
13:34:01 2 relevant to this case, correct?

13:34:03 3 A. Yes, sir.

13:34:03 4 Q. And you and the FBI and the Department of Justice analyzed
13:34:08 5 every single phone, computer, memory card, et cetera, correct?

13:34:13 6 A. I can't testify to every single one, but the case agent from
13:34:18 7 FBI could.

13:34:18 8 Q. Who would I ask that question to?

13:34:20 9 A. Special Agent Lawson.

13:34:21 10 Q. Lawson?

13:34:22 11 A. Yes, sir.

13:34:22 12 Q. Okay. But this was a big case, a big investigation, right?

13:34:26 13 A. Very big.

13:34:27 14 Q. So you guys are not going to just let something go to
13:34:30 15 chance, are you?

13:34:32 16 A. I wouldn't.

13:34:33 17 Q. Fair enough. Thank you. Have a good weekend.

13:34:35 18 A. Thank you, sir. You, too.

13:34:39 19 MR. SANCHEZ: No questions.

13:34:40 20 MR. WOMACK: Briefly, your Honor. Thank you.

13:34:42 21 RE-CROSS EXAMINATION

13:34:42 22 BY MR. WOMACK:

13:34:43 23 Q. Special Agent Johnston, about the two areas Mr. Gardner
13:34:46 24 asked you related to my client, again, when I asked you about
13:34:49 25 registration as it's referred to in the e-mails, you said in this

13:34:53 1 case, that meant registration for horses, correct?

13:34:55 2 A. In this case, yes.

13:34:57 3 Q. Okay. And then, when Mr. Gardner got back up and asked you

13:35:00 4 about registration, you said it refers to registration of horses?

13:35:04 5 A. Correct.

13:35:05 6 Q. So no difference, correct?

13:35:07 7 A. I wouldn't say there's no difference. You asked me in a

13:35:09 8 different way than AUSA Gardner did.

13:35:12 9 Q. Okay. But we agree that the registration, when that word is

13:35:15 10 used, it means registration of these race horses, doesn't it?

13:35:19 11 A. Correct.

13:35:19 12 Q. And from your investigation and your work with everyone else

13:35:24 13 in this case, you know that if you're the owner of a race horse,

13:35:28 14 the registration is in your name. You know that if you're the

13:35:32 15 owner?

13:35:32 16 A. Yeah. If you're the owner and you want that paperwork

13:35:35 17 that's going to be in your name.

13:35:36 18 Q. And so, if you hear that ranches, farms, stables, trainers

13:35:46 19 are being arrested or being questioned by the police, things are

13:35:49 20 being taken from them, if you're an owner of a horse, you'd like

13:35:52 21 to have your certificate of title back, wouldn't you?

13:35:54 22 A. If I was an owner of a horse, I wouldn't let anyone else

13:35:56 23 have my certificate of title. I would keep it.

13:35:58 24 Q. Well, if you have someone racing your horse, or whatever,

13:36:01 25 they may need that registration, correct?

13:36:02 1 A. They may.

13:36:03 2 Q. Okay. And my question to you is, if you're the owner of a

13:36:09 3 horse, especially we're talking about high-dollar race horses in

13:36:11 4 this case.

13:36:11 5 A. Yes, sir.

13:36:12 6 Q. If you're the owner of a high-dollar race horse, you would

13:36:15 7 like to have -- especially if the police are involved searching

13:36:17 8 people, you would like to have your certificate of registration

13:36:20 9 back, wouldn't you?

13:36:21 10 A. I would want it. Yes, sir.

13:36:22 11 Q. Sure. Now, other thing was about Exhibit 358 Delta, e-mails

13:36:32 12 where Jane Eckert on behalf of Heritage Place was sending to

13:36:40 13 Fernando Garcia, he had spent two months -- can you find out when

13:36:46 14 they're going to pay for these horses. You've paid 228,700, you

13:36:52 15 know, they still owed 51,700. And you know that in response to

13:36:56 16 that, it would look from the e-mail traffic that some Canales --

13:37:05 17 and I forget the name of this Canales sent images to Papalotes.

13:37:10 18 And then, Papalotes forwarded those images of deposit slips

13:37:14 19 directly to Fernando, who we know -- who transferred them

13:37:19 20 directly to Jane Eckert, correct?

13:37:21 21 A. Yes, sir.

13:37:21 22 Q. Now, when -- an interesting thing that Mr. Gardner did is he

13:37:27 23 took all these receipts and he added up the figures and totalled

13:37:31 24 it up to \$51,700. Remember that?

13:37:34 25 A. Yes, sir.

13:37:35 1 Q. If someone was trying to hide from Heritage Place that
13:37:43 2 people were making structured deposits, they could have done the
13:37:46 3 same thing. They could have said, oh, here's the total of all
13:37:50 4 payments and just sent in a letter saying it's been paid,
13:37:52 5 correct?

13:37:53 6 A. Can you rephrase the question? I don't understand.

13:37:56 7 Q. Okay. If, for some reason, I was asked to send a note to
13:38:01 8 Heritage Place saying, hey, the horses are paid for, I could have
13:38:06 9 just sent a note saying the horses are paid for, if you look in
13:38:09 10 your account, there's \$51,700. Instead, what Fernando Garcia did
13:38:15 11 is he actually forwarded the actual receipts, didn't he?

13:38:19 12 A. They were deposit slips that he -- they weren't --

13:38:23 13 Q. I'm saying receipts. You're correct. He forwarded the
13:38:26 14 actual deposit slips that had been sent to him. Correct?

13:38:29 15 A. Yes. That's correct.

13:38:29 16 Q. And we all know that that deposit slip -- those deposit
13:38:34 17 slips have numbers and figures telling the date and time and all
13:38:39 18 kinds of information about those deposits, correct?

13:38:42 19 A. Yes, sir.

13:38:43 20 Q. And Fernando Garcia did nothing to disguise those. He
13:38:47 21 forwarded them directly to Heritage Place, didn't he?

13:38:50 22 A. He did forward those deposits to Heritage.

13:38:54 23 Q. Okay. And he didn't blot out the account number. He sent
13:39:02 24 the slip just the way they came to him, didn't he?

13:39:04 25 A. Yeah. He just forwarded the e-mail just like he had.

13:39:08 1 Q. And so, we know the deposits were made over this period of
13:39:11 2 time by someone or someone who's provided them to the Canales
13:39:17 3 that then sent them to Papalotes, who sent them to Fernando to
13:39:21 4 sent to Heritage Place, correct?

13:39:23 5 A. Yes. Those deposit slips which were sent to Papalotes were
13:39:29 6 then sent to Jose Luis, which were then sent to your client, and
13:39:32 7 they were sent to pay for horses.

13:39:33 8 Q. And these were deposit slips that were sent through that
13:39:36 9 chain of people?

13:39:37 10 A. Yes. And the deposit slips, they were scanned into his
13:39:41 11 computer and sent. The originals, they come out in color.

13:39:45 12 Q. I gotcha. Thank you. No further questions.

13:39:48 13 MR. ESPER: No question, your Honor.

13:39:50 14 MR. MAYR: No questions, your Honor.

13:39:53 15 RE-DIRECT EXAMINATION

13:39:55 16 BY MR. GARDNER:

13:39:57 17 Q. Mr. Womack asked you to draw a conclusion about the
13:39:59 18 registrations. What conclusion do you draw when you compare the
13:40:04 19 horses.quarter e-mail with the 51,700 payments to Heritage Place
13:40:13 20 again?

13:40:14 21 A. That the horses which were being paid for were under the
13:40:19 22 true ownership of Los Zetas.

13:40:21 23 Q. Thank you. No further questions, your Honor.

13:40:25 24 MR. WOMACK: Your Honor, I have to ask.

13:40:28 25

RE-CROSS EXAMINATION

13:40:28 1 BY MR. WOMACK:

13:40:29 3 Q. You found registrations in the name of Los Zetas?

13:40:32 4 A. I didn't find any registrations.

13:40:33 5 Q. Did -- okay. Well, you were just asked about it by Mr.

13:40:37 6 Gardner and you said that. Do you have any document that -- of

13:40:41 7 registration certificate in the name of a Zeta?

13:40:43 8 A. Those registrations were put under a lot of different straw

13:40:47 9 purchasers' names for Los Zetas. That's correct.

13:40:51 10 Q. And that's the conclusion that you're reaching from your

13:40:53 11 work?

13:40:53 12 A. From the course of this investigation, yes, sir.

13:40:55 13 Q. Okay. No further questions.

13:41:00 14 THE COURT: May the witness be excused?

13:41:02 15 MR. FINN: No objection.

13:41:03 16 MR. MAYR: Actually, I do, your Honor. I'd like to

13:41:05 17 keep the witness on call, have him available if I notify the

13:41:08 18 government for his agent to be recalled.

13:41:11 19 THE COURT: You're on recall. You remain under the

13:41:16 20 rule.

13:41:16 21 THE WITNESS: Thank you, sir.

13:41:17 22 THE COURT: You may call your next witness.

13:41:18 23 MR. GARDNER: The government calls Special Agent Billy

13:41:20 24 Williams.

13:41:32 25 (Witness sworn.)

13:41:50 1 THE COURT: Tell us your full name, please, sir, and
13:41:56 2 spell your last.

13:41:57 3 THE WITNESS: My name is Billy Williams. It's spelled,
13:42:00 4 W-I-L-L-I-A-M-S.

13:42:02 5 THE COURT: Mr. Williams, don't speak right into that
13:42:05 6 mic.

13:42:05 7 THE WITNESS: Okay. I'm sorry.

13:42:07 8 BILLY WILLIAMS, called by the Government, duly sworn.

13:42:07 9 DIRECT EXAMINATION

13:42:07 10 BY MR. GARDNER:

13:42:14 11 Q. Special Agent Williams, could you please introduce yourself
13:42:17 12 to the jury?

13:42:17 13 A. My name is Billy Williams. I'm a special agent with the
13:42:20 14 Internal Revenue Service.

13:42:21 15 Q. And, sir, could you please explain a little bit of your
13:42:23 16 background and experience and education?

13:42:25 17 A. I received a Bachelor's of Business Administration degree.
13:42:30 18 I have a minor in accounting and a minor in economics. I've been
13:42:34 19 with the Internal Revenue Service for 21 years, 14 as a revenue
13:42:38 20 agent and seven years as a criminal investigator.

13:42:40 21 Q. And, sir, what was your area of responsibility in this case?

13:42:44 22 A. Analyze bank records. I went through search warrant items,
13:42:49 23 subpoena records, interviewed witnesses, and talked to other
13:42:54 24 agents prior to trial.

13:42:56 25 Q. And with respect to the financial analysis, what accounts

13:43:00 1 did you analyze?

13:43:01 2 A. I analyzed the Huitron accounts, Fernando Garcia's accounts,

13:43:06 3 Garcia Bloodstock's, Victor Lopez, and Bonanza Racing Stables.

13:43:11 4 Q. And, again, the jury's heard a little bit about it, but

13:43:16 5 what's the purpose of your financial analysis?

13:43:18 6 A. To determine the currency that went through each of these

13:43:21 7 accounts.

13:43:22 8 Q. Now, the jury has seen a form by Ms. Eckert from Heritage

13:43:27 9 Place off of Form 8300. I'm showing you what has been marked as

13:43:30 10 a demonstrative exhibit, Government's 420. Do you recognize

13:43:33 11 that, sir?

13:43:34 12 A. Yes, sir, I do.

13:43:35 13 Q. Is that the same form that Ms. Eckert showed the jury

13:43:38 14 yesterday?

13:43:39 15 A. No. She would have -- this is 8300. This is Form 104,

13:43:44 16 currency Transaction Report.

13:43:46 17 Q. It's a different form?

13:43:47 18 A. Yes.

13:43:48 19 Q. Okay. Your Honor, I offer Government's Exhibit 420 for

13:43:55 20 demonstrative aid.

13:44:04 21 THE COURT: 420 as a demonstrative exhibit is admitted.

13:44:12 22 Q. (BY MR. GARDNER) Again, Special Agent Williams, you said

13:44:14 23 this is a Currency Transaction Report.

13:44:17 24 A. Yes, it is.

13:44:18 25 Q. Form 104. How does this form differ from what Ms. Eckert

13:44:28 1 showed us yesterday, Form 8300?

13:44:30 2 A. Form 8300, that is normally filled out if a -- like a trade

13:44:35 3 or a business like a car lot receives over \$10,000 in one or more

13:44:39 4 transactions. And a Currency Transaction Report is when a bank,

13:44:43 5 a financial institution receives over \$10,000 in one or more

13:44:48 6 transactions.

13:44:48 7 Q. And I just want to go over this section with you briefly.

13:44:55 8 So what's this section for?

13:44:57 9 A. Section A is for the individual, say, just myself. If

13:45:02 10 that's my account, that would list me as the individual in that

13:45:08 11 area if I deposited over \$10,000 in one or more transactions.

13:45:12 12 Q. So let's say I had a guy and his name was Steve Law. Would

13:45:22 13 that money be accounted -- deposited to that individual's

13:45:25 14 account?

13:45:25 15 A. Yes, sir.

13:45:30 16 Q. What's Section B for?

13:45:32 17 A. Section B is for, say, another individual makes a deposit on

13:45:37 18 behalf of the person in Section A, their name would be on Section

13:45:42 19 B.

13:45:43 20 Q. So let's say I name this guy Scott Penn. So tell me, let's

13:45:54 21 say I had \$10,000. How does Scott Penn relate to Steve Law?

13:45:58 22 A. In that case, they are associated with each other because A

13:46:03 23 would have to give B their bank account information, the right

13:46:09 24 number and account number to make that deposit.

13:46:10 25 Q. So how does the bank obtain all the information in A and in

13:46:17 1 B?

13:46:18 2 A. They would receive information from each of those

13:46:22 3 individuals.

13:46:23 4 Q. So the individual making the deposits provides the

13:46:27 5 information?

13:46:27 6 A. Yes.

13:46:27 7 Q. And how do they provide the information?

13:46:29 8 A. You provide driver's license. As you see on line 14, they

13:46:33 9 would get it from those information.

13:46:44 10 Q. So the bank requires a method that the individual used to

13:46:48 11 identify, correct?

13:46:49 12 A. Yes.

13:46:50 13 Q. And it says in A, driver's license, B, passport, C, alien

13:46:55 14 registration, or D, other?

13:46:58 15 A. Yes.

13:47:02 16 Q. And what does the bank do with one of these once they filled

13:47:06 17 it out?

13:47:07 18 A. They will send it to what they call a FinCEN, which is the

13:47:11 19 national database and they keep track of all those.

13:47:15 20 Q. Keep track for investigative purposes?

13:47:20 21 A. Yes.

13:47:20 22 Q. Or database track?

13:47:22 23 A. Yes.

13:47:23 24 Q. Could you please tell the jury what structuring is?

13:47:25 25 A. Structuring is when an individual makes -- like, tries to

13:47:33 1 make a deposit in increments of less than \$10,000 to a financial
13:47:37 2 institution to make them fail to file this Form 104.

13:47:44 3 Q. So if I give you an example, hypothetically, if I take
13:47:48 4 \$90,000 in income, how could I structure that money?

13:47:54 5 A. You would deposit 9,000 at one bank, 9,000 at another, or
13:47:59 6 come back later to the same bank, or you could go to different
13:48:02 7 banks to make that deposit.

13:48:05 8 Q. What if I wanted to deposit that whole \$90,000 at one time?

13:48:09 9 Is that a criminal act?

13:48:10 10 A. No. There's no problem with depositing \$10,000 cash.

13:48:16 11 Q. Let's say I take that \$90,000 that I've earned from
13:48:21 12 legitimate income and I've structured it. Do I commit a crime?

13:48:24 13 A. Yes, you have. You have committed violation of structuring,
13:48:28 14 Title 21, 5324.

13:48:31 15 Q. Based on your training and experience, could you give the
13:48:34 16 ladies and gentlemen of the jury some of the indicators of
13:48:36 17 criminal activity that you look for in a financial analysis?

13:48:39 18 A. When you do a financial analysis, you look for different
13:48:43 19 ways that they conceal the income in different accounts, the
13:48:49 20 change in their business practice. We'll just take one of the
13:48:55 21 instances. The Huitrons, they have separate accounts, Huitron
13:48:57 22 Homes, Huitron Painting, and they have certain activity going
13:49:03 23 into Huitron Homes, which is a bunch of currency that went into
13:49:07 24 those accounts. So they have a change in their practice of how
13:49:10 25 they're doing their business.

13:49:12 1 Q. And why do you look for changes or indicators of criminal
13:49:16 2 activities?
13:49:18 3 A. To verify that people are not trying to hide large deposits,
13:49:24 4 structuring money, and so forth.
13:49:28 5 Q. Now, one of the things the government has to prove here is
13:49:31 6 knowledge. How do your research into these indicators of
13:49:36 7 criminal activity go to show someone has knowledge of that
13:49:38 8 particular criminal activity?
13:49:40 9 A. Now, when people have knowledge, if you take a certain
13:49:45 10 person's account, just say the Huitrons, I analyzed their account
13:49:50 11 6769 from January 5th to 2009 to May 2012.
13:49:56 12 MR. DEGEURIN: Excuse me, Mr. Williams. Objection,
13:49:59 13 your Honor. He's going to render an opinion on intent of
13:50:05 14 another.
13:50:08 15 MR. GARDNER: I'll go ahead and lay a better
13:50:10 16 foundation, your Honor. He has been listed as an expert witness
13:50:13 17 and notice has been given.
13:50:15 18 Q. (BY MR. GARDNER) Let's just step back a little bit. So I
13:50:18 19 want to talk about first an individual named Victor Lopez. Did
13:50:21 20 you analyze his account?
13:50:22 21 A. Yes, I did.
13:50:23 22 Q. Just for the record, that's Government's Exhibit 254. Sir,
13:50:32 23 is this the account you analyzed?
13:50:33 24 A. Yes. That's one of them. There's two accounts on here,
13:50:37 25 6061 and the account ending 4637.

13:50:40 1 Q. And what bank were Mr. Lopez's accounts at?

13:50:43 2 A. Wells Fargo.

13:50:47 3 Q. When you analyzed the account, did you analyze the deposits

13:50:51 4 going in?

13:50:52 5 A. Yes, I did.

13:50:53 6 Q. And did you analyze the expenses going out?

13:50:59 7 A. Yes. There weren't too many deposits that went into

13:51:03 8 Victor's account.

13:51:04 9 MR. MAYR: Objection. Nonresponsive.

13:51:05 10 THE COURT: Just answer the question.

13:51:06 11 Q. (BY MR. GARDNER) Did you analyze the accounts?

13:51:09 12 A. Yes.

13:51:09 13 Q. And what did you find?

13:51:10 14 A. That there weren't too many cash deposits that went into

13:51:13 15 that account nor expenses.

13:51:19 16 Q. And did you analyze the Huitron Homes account?

13:51:22 17 A. Yes, I did.

13:51:23 18 Q. All right. That was a large account, correct?

13:51:25 19 A. Yes.

13:51:25 20 Q. And that's Government's Exhibit 256A; is that correct?

13:51:32 21 A. Yes.

13:51:34 22 Q. You probably don't have the exhibit sticker, do you?

13:51:37 23 A. No, sir.

13:51:38 24 Q. Your Honor, that's 256A that's been admitted. Just

13:51:42 25 generally, can you describe to the jury what evidence you found

13:51:46 1 in the Huitron accounts?

13:51:48 2 A. When I was going through their account, Huitron Homes with

13:51:51 3 the account ending 6769 from January 5th to May 2012, over the

13:51:59 4 18-month period from January 5th, 2009 to July 2010, there was

13:52:05 5 only a total of \$113,000 cash deposits into that account.

13:52:09 6 Q. And, I'm sorry, could you give me the date range on that

13:52:12 7 again?

13:52:12 8 A. July -- January 5th, 2009 to July 7th, 2010.

13:52:19 9 Q. January 5th, 2009 to July 7th, 2010?

13:52:23 10 A. Yes.

13:52:23 11 Q. And the amount?

13:52:24 12 A. \$113,013.

13:52:27 13 Q. And did you analyze the account after July of 2010?

13:52:33 14 A. Yes, I did.

13:52:34 15 Q. And why did you pick that date as a distinguishing date?

13:52:38 16 A. After July 12th, 2010, that's when a large amount of cash

13:52:44 17 was starting to be structured into that account.

13:52:47 18 Q. And if you will, could you say the last date you analyzed?

13:52:52 19 Or give me the range. July 2010 until when?

13:52:56 20 A. Till May 2012.

13:53:02 21 Q. And how much cash was structured into the account from July

13:53:06 22 2010 until May of 2012?

13:53:09 23 A. \$505,007.

13:53:13 24 THE COURT: Give me that again, please.

13:53:14 25 THE WITNESS: \$505,007.

13:53:20 1 Q. (BY MR. GARDNER) And these are all cash deposits?

13:53:21 2 A. Yes, all cash.

13:53:22 3 Q. Was some structured and some what we call bulk cash?

13:53:25 4 A. Well, yes. Some structured. And, I mean, there were

13:53:29 5 increments like 6,000, 7,000, but the bank probably wouldn't

13:53:32 6 catch those amounts.

13:53:34 7 Q. I just want to show you a page from Government's Exhibit

13:53:37 8 256A. As an example, page 412163. I'm showing a date of what

13:53:48 9 right here, Mr. Williams?

13:53:50 10 A. November 15th.

13:53:54 11 Q. And the amount?

13:53:55 12 A. \$9,000.

13:53:57 13 Q. Going down here, there's a deposit at a branch store on this

13:54:09 14 date, 11-16?

13:54:10 15 A. Yes.

13:54:10 16 Q. And what's that amount?

13:54:11 17 A. 7,000.

13:54:12 18 Q. And why do you make the conclusion that that's evidence of

13:54:16 19 structuring?

13:54:17 20 A. Because the increments, they are 7,000, 9,000.

13:54:21 21 Q. And do you combine the increments also with the timing of

13:54:25 22 the deposits?

13:54:25 23 A. Yes.

13:54:25 24 Q. I want to show you another page from the same exhibit, page

13:54:37 25 41-2484. And the date here, Special Agent?

13:54:59 1 A. July 6, both deposits.

13:55:03 2 Q. And the amounts?

13:55:07 3 A. They are both \$9,900 each.

13:55:19 4 Q. May I have one moment, your Honor, to retrieve an exhibit?

13:55:54 5 Now, you said, earlier, that you also looked at some of

13:56:00 6 the search warrant evidence; is that correct?

13:56:01 7 A. Yes, I did.

13:56:02 8 Q. Okay. And I'll pull one out, Government's Exhibit 60A

13:56:07 9 through E. I'm going to show you this second page on that

13:56:35 10 exhibit. What are these amounts right here, Special Agent?

13:56:46 11 A. Those amounts match the deposit statement that you just

13:56:52 12 showed me.

13:56:52 13 Q. And, specifically, we had two other 8,000s I didn't show you

13:56:56 14 when we're talking about the 9,000 and 7,000?

13:56:58 15 A. Yes.

13:56:59 16 Q. And these horses, do you recognize these horses from other

13:57:03 17 involvement in this investigation?

13:57:04 18 A. Yes, I do.

13:57:05 19 Q. Do you recognize this name?

13:57:07 20 A. Yes. Jose.

13:57:09 21 Q. So, again, based on your analysis of that account, what do

13:57:12 22 these amounts appear to consist of?

13:57:14 23 A. Structuring.

13:57:16 24 Q. And, again, where was this item found?

13:57:18 25 MR. MAYR: Your Honor, may we approach?

13:57:28 1 (At the bench, on the record.)

13:57:39 2 MR. MAYR: I'm looking at my rule book here and it says

13:57:41 3 that in a criminal case, an expert witness must not state an

13:57:43 4 opinion as to whether the defendant did or did not have a mental

13:57:47 5 state. Now, it seems to me that the government seems to think

13:57:50 6 that structuring is just a strict liability offense, and just

13:57:54 7 because it's occurring, that the person's committing the offense.

13:57:56 8 And by keep asking him, is this evidence of structuring, evidence

13:58:01 9 of structuring, it's implying that when that's not the case.

13:58:04 10 Structuring requires a culpable mental state.

13:58:07 11 And, therefore, I would object to this continued line

13:58:12 12 of questioning of having him testify as to this is evidence that

13:58:15 13 they knew that they were committing the offense.

13:58:19 14 MR. GARDNER: I can rephrase my question, but I can

13:58:22 15 just ask him is it consistent with structuring.

13:58:25 16 THE COURT: I don't have a question pending and I don't

13:58:28 17 have an objection. I've got an objection without a question. If

13:58:33 18 you think that the question's wrong.

13:58:35 19 MR. MAYR: If the question -- as long as the question

13:58:37 20 is, is it consistent with it, that's fine. But what is that

13:58:40 21 evidence of and he says structuring, that's telling this jury

13:58:43 22 what my client's culpable mental state is. They can't do that.

13:58:47 23 THE COURT: Well, then I think that's you probable

13:58:51 24 should object instead of asking to come up here.

13:58:54 25 MR. MAYR: All right.

13:58:57 1 MR. ESPER: You're objecting now.

13:58:58 2 MR. MAYR: I'm making my objection now.

13:59:00 3 THE COURT: Well, there's no question before me.

13:59:01 4 MR. MAYR: I understand that. Pardon me.

13:59:07 5 Q. (BY MR. GARDNER) Again, Special Agent Williams, I believe

13:59:10 6 the last question was, where was this item located?

13:59:14 7 A. That was in the Huitrons' records in the front office.

13:59:20 8 Q. This is from their business address?

13:59:22 9 A. Yes.

13:59:22 10 Q. At 183, Highway 183 here in Austin?

13:59:26 11 A. Yes.

13:59:26 12 Q. Do you know whose writing any of this is?

13:59:36 13 A. The 6485 may appear to be Jessica, but I can't really tell

13:59:43 14 all of them.

13:59:44 15 Q. Would you at least agree with me there appears to be

13:59:47 16 different persons' writing on here?

13:59:48 17 A. Yes.

13:59:49 18 Q. For example, the person writing on this portion here appears

13:59:51 19 to be talking about paints, I would assume?

13:59:54 20 A. Yes.

13:59:58 21 Q. And, again, on this side, does there also appear to be

14:00:02 22 different people writing?

14:00:02 23 A. Yes.

14:00:03 24 Q. How old is Jessica Huitron?

14:00:05 25 A. Twenty-nine.

14:00:08 1 Q. Do you know what function she performed in the Huitron
14:00:13 2 office?

14:00:15 3 A. I think she happened do some of the paperwork that's in the
14:00:20 4 office.

14:00:20 5 Q. Now, I'm showing you Government's Exhibit 60E, also from the
14:00:24 6 Huitron office. There's a lot of writing on here.

14:00:28 7 A. Yes.

14:00:29 8 Q. Just give an overall view. And this includes horse names
14:00:36 9 and various amounts. Would you agree with that?

14:00:38 10 A. Yes.

14:00:40 11 Q. But, specifically, what I want to refer you to is down here
14:00:44 12 in the corner.

14:00:48 13 A. Yes.

14:00:50 14 Q. What are these loan numbers here? It appears to be another
14:00:53 15 handwriting in blue as it relates to this \$9,900 deposit and this
14:01:04 16 \$9,900 deposit?

14:01:04 17 A. It's possibly a -- maybe a cashier's check that was
14:01:08 18 purchased with those amounts.

14:01:12 19 Q. Special Agent Williams, I want to refer you back to
14:01:15 20 Government's Exhibit 256A, specifically, page 412484.

14:01:21 21 A. Yes.

14:01:22 22 Q. Did you, in fact, check that -- these two deposits?

14:01:27 23 A. Yeah. Those two deposits match the --

14:01:30 24 Q. Yes.

14:01:30 25 A. -- two numbers on those pages.

14:01:33 1 Q. Correct. And, again, is this two deposits here next to the
14:01:40 2 horse name, is that consistent with structuring?

14:01:43 3 A. Yes.

14:02:05 4 Q. Now, did you obtain an exhibit from the FinCEN center --
14:02:19 5 showing you Government's Exhibit 352. Did you obtain those, sir?

14:02:25 6 A. Yes, I did.

14:02:26 7 Q. And there's three separate sets of papers there in 352. I
14:02:31 8 probably should have labeled them A, B and C. But generally what
14:02:35 9 are they?

14:02:35 10 A. These are the listings of the -- which is CTR is Currency
14:02:39 11 Transaction Reports that are on file with FinCEN.

14:02:41 12 Q. And is that just for the Huitron accounts, or is that for
14:02:45 13 all three individuals you identified?

14:02:46 14 A. All three individuals I identified.

14:02:55 15 Q. Your Honor, may I have a moment to log these for ease of
14:03:10 16 identification?

14:04:25 17 Special Agent Williams, I apologize. Could you tell
14:04:29 18 the Court what 352A is, specifically, the person's accounts?

14:04:34 19 A. 352A is Victor Lopez. The Currency Transaction Reports that
14:04:41 20 were filed on him.

14:04:42 21 Q. And 352B?

14:04:46 22 A. 352B is for Huitron Painting and for Huitron Homes.

14:04:56 23 Q. And 352C?

14:05:00 24 A. Is for Fernando Garcia and Garcia Bloodstock.

14:05:04 25 Q. Your Honor, I would offer Government's Exhibits 352A, B and

14:05:08 1 C, certified official records offered under 803(8).

14:06:33 2 MR. MAYR: No objection, your Honor.

14:06:38 3 THE COURT: 352A, B and C are admitted.

14:06:42 4 MR. GARDNER: A, B and C, your Honor.

14:06:47 5 THE COURT: What did you --

14:06:48 6 MR. GARDNER: I offered A, B and C, your Honor.

14:06:51 7 THE COURT: Yeah, A, B and C.

14:06:55 8 MR. GARDNER: Thank you.

14:07:00 9 Q. (BY MR. GARDNER) Let's start with 352B, Special Agent

14:07:05 10 Williams. Again, just to give an overview, this is a certified

14:07:16 11 record from the FinCEN center stating what?

14:07:20 12 A. These are all the CTRs that were filed on behalf of Huitron

14:07:27 13 Homes or Jesus Huitron.

14:07:28 14 Q. Showing you Government's Exhibit 420 for demonstrative

14:07:32 15 purposes, each one of those lines on that spreadsheet represents

14:07:35 16 one of these, correct?

14:07:36 17 A. Yes.

14:07:37 18 Q. With respect to these particular transactions, could you

14:07:49 19 explain to the jury who files CTRs for the Huitrons' account?

14:07:56 20 A. If you start at the top, it shows that Jesus Huitron, they

14:08:03 21 filed a CTR on him.

14:08:05 22 Q. Right here, Jesus Huitron?

14:08:06 23 A. Yeah. The first three.

14:08:08 24 Q. First three?

14:08:09 25 A. Then, the next three were Victor Lopez where he went in to

14:08:14 1 deposit money on behalf of the Huitrons, his name would have
14:08:20 2 shown up in the second section. So Victor Lopez deposited money
14:08:24 3 into the Huitrons' account.

14:08:26 4 Q. And then, again, just repeats itself?

14:08:28 5 A. Yes.

14:08:29 6 Q. Jesus Huitron and Victor Lopez?

14:08:32 7 A. Yes.

14:08:32 8 Q. Or in this case, Jesus Huitron on behalf of Huitron Homes?

14:08:36 9 A. Right.

14:08:37 10 Q. And then, follows that way?

14:08:39 11 A. Right.

14:08:40 12 Q. So then, I scroll over, those are the filing institutions?

14:08:47 13 A. Yes.

14:08:47 14 Q. So that shows the places of deposit to?

14:08:53 15 A. Yes.

14:08:54 16 Q. And could you just explain for the record the majority of
14:08:57 17 those deposits occurred where?

14:08:58 18 A. In the city that they were -- occurred in San Francisco,
14:09:02 19 Laredo, Bueno Park, Austin and Buda, McAllen, Houston and Orange,
14:09:07 20 Texas.

14:09:09 21 Q. And this next column, that's the total cash in, correct?

14:09:12 22 A. Yes.

14:09:13 23 Q. All right. And on the CTRs, explain this to me. Is a bank
14:09:23 24 required to fill one of these out every time I deposit less than
14:09:28 25 \$10,000 in cash?

14:09:29 1 A. Not if you deposit less. No.

14:09:31 2 Q. All right. So let's say I go to one branch and deposit

14:09:34 3 \$9,000. No CTR, right?

14:09:37 4 A. No CTR.

14:09:38 5 Q. Let's say I go to another branch the very same day and

14:09:41 6 deposit \$9,000?

14:09:42 7 A. Yeah. The bank will back that up on their system that it

14:09:44 8 was a \$10,000 transaction made within that day.

14:09:48 9 Q. And will they file a CTR then?

14:09:49 10 A. Yes.

14:09:50 11 Q. All right. And so, how it relates to Government's Exhibit

14:09:56 12 325B in the column marked total cash in, does that necessarily

14:10:02 13 reflect merely a single deposit of cash?

14:10:05 14 A. Some may and majority of them, not so.

14:10:09 15 Q. So, again, back with 420, when it says Jesus Huitron on the

14:10:19 16 CTR?

14:10:19 17 A. Yes.

14:10:20 18 Q. Who actually made that deposit?

14:10:23 19 A. Jesus Huitron.

14:10:26 20 Q. When it says Victor Lopez on behalf of Jesus Huitron, where

14:10:30 21 would Victor Lopez be on this Currency Transaction Report?

14:10:33 22 A. Victor Lopez name would be under Section B.

14:10:37 23 Q. And who would be in Section A?

14:10:40 24 A. Jesus Huitron.

14:10:41 25 Q. So, again, in order to fill one of these out, someone has to

14:10:45 1 provide some sort of identification?

14:10:47 2 A. Right. And then, again, B has to provide A their banking

14:10:51 3 information to make that deposit.

14:10:54 4 Q. So if this were, in fact, a deposit by Victor Lopez, whose

14:11:00 5 account information would he have to have?

14:11:01 6 A. He would have to have Jesus Huitron's account information.

14:11:16 7 Q. Now, in your review of Government's Exhibit 352A, 352B,

14:11:27 8 352C, and the other items you reviewed -- let me back up.

14:11:30 9 When you analyzed Victor Lopez's account, how much

14:11:35 10 structuring -- or what evidence you saw consistent with

14:11:37 11 structuring did you see?

14:11:38 12 A. Well, in his account, none. But going over records with

14:11:43 13 CTRs with him, he had -- he structured approximately \$1.3 million

14:11:49 14 in different people's account.

14:11:51 15 Q. And could you identify for the jury whose accounts he's

14:11:55 16 depositing cash into?

14:11:58 17 A. LA Horses, Inc., Paul Jones, Southwest Stallions, Jesus

14:12:04 18 Huitron, Equine Sports Medicine, Reba Choice, Victor Lopez, his

14:12:10 19 own, Felipe Quintero, Mario Gonzalez.

14:12:18 20 Q. Let's move to Victor -- I'm sorry. To Fernando Garcia's

14:12:21 21 account. What analysis did you do on Fernando Garcia's account?

14:12:28 22 A. I reviewed several of his accounts, as well.

14:12:33 23 Q. Just for the record, which accounts did you review?

14:12:39 24 A. Two Bank of America and one Wells Fargo account.

14:12:42 25 Q. I'm showing you Bank of America ending in 1077.

14:12:46 1 A. And 1093.

14:12:48 2 Q. And that's Government's Exhibit 253A and 253B, your Honor.

14:13:01 3 When you did an analysis of Victor Lopez's account --

14:13:05 4 I'm sorry, Fernando Garcia's account, could you tell the ladies

14:13:07 5 and gentlemen of the jury when that account was established?

14:13:10 6 A. The 1093 and the 1097 was established on September 8, 2008,

14:13:17 7 the day he established the name Garcia Bloodstock and Racing.

14:13:22 8 Q. So the name of his company was established the same day he

14:13:24 9 opened this account?

14:13:26 10 A. Yes.

14:13:28 11 Q. And based on your review of the records, what did he do that

14:13:32 12 day?

14:13:32 13 A. That day, he deposited like \$81,000 into his account.

14:13:40 14 Q. Showing you Government's Exhibit 252A. Bates stamp 613075.

14:14:01 15 What are all these \$9,000 counter credits?

14:14:05 16 A. Those are all cash deposits made at different banks.

14:14:10 17 Q. All in the same day?

14:14:11 18 A. Yes.

14:14:11 19 Q. But a couple, right?

14:14:12 20 A. Right.

14:14:13 21 Q. Now, behind that, the jury's heard what is called source

14:14:17 22 documents. Did you obtain the source documents for the Garcia

14:14:21 23 account?

14:14:22 24 A. Yes, we did.

14:14:23 25 Q. And when we refer to source documents, is this an example of

14:14:27 1 the source document?

14:14:29 2 A. Yes.

14:14:33 3 Q. And, Special Agent Williams, a number of these are tabbed.

14:14:37 4 Would you agree me, instead of going through each one of them,

14:14:39 5 they all reflect the deposits that are reported on the bank

14:14:43 6 statement?

14:14:44 7 A. Yes.

14:14:53 8 Q. Showing you Government's Exhibit 416. Do you recognize

14:14:58 9 that, sir?

14:14:58 10 A. Yes, I do.

14:14:59 11 Q. Did you, in fact, make it?

14:15:00 12 A. Yes, I did.

14:15:01 13 Q. All right. And what is it?

14:15:03 14 A. It's a map where Fernando Garcia started at one bank and

14:15:10 15 made all the deposits at all the different banks that day.

14:15:13 16 Q. So on each one of these deposit slips, does it identify the

14:15:17 17 bank in which the deposit was made?

14:15:18 18 A. Yes, it does.

14:15:19 19 Q. And did you identify that a number of those deposits were

14:15:22 20 made at separate branches?

14:15:23 21 A. Yes.

14:15:24 22 Q. Your Honor, I would offer Government's Exhibit 416 as a

14:15:30 23 demonstrative exhibit only.

14:15:36 24 THE COURT: Received as a demonstrative.

14:15:45 25 Q. (BY MR. GARDNER) Again, Special Agent Williams, what do the

14:15:52 1 letters signify on the map?

14:15:55 2 A. The different addresses of each bank.

14:15:58 3 Q. And did you also check the timestamp on each one of the

14:16:01 4 deposits?

14:16:02 5 A. Yes, I did.

14:16:03 6 Q. For example, let me show you page 613284. Was it El

14:16:20 7 Conquistador -- what is that?

14:16:22 8 A. El Conquistador is the branch where he opened the account.

14:16:26 9 Q. So the first place he made his deposit?

14:16:29 10 A. Yes.

14:16:30 11 Q. Going back to the map, when you put the letters, is that the

14:16:45 12 sequence in which the deposits were made?

14:16:49 13 A. Yes.

14:16:50 14 Q. Based on the timestamp?

14:16:51 15 A. Yeah, based on the timestamps of the deposit slips.

14:16:55 16 Q. And how long did it take Fernando Garcia to make one, two,

14:16:58 17 three, four, five, six, seven, eight, nine deposits?

14:17:02 18 A. Approximately four to five hours.

14:17:04 19 Q. And, again, he made a couple the next day, correct?

14:17:08 20 A. Yes.

14:17:11 21 Q. What other activity occurred in that account?

14:17:14 22 A. The day he deposited all those moneys, like two days later

14:17:20 23 on the 10th, he sent \$90,000 to Ruidoso Downs sales.

14:17:25 24 Q. Ruidoso Downs horse auction?

14:17:28 25 A. Yes.

14:17:28 1 Q. Is that for the purchase of horses?

14:17:32 2 A. Yes.

14:17:36 3 Q. And how was that based? Was that based on a cash deposit or

14:17:40 4 based on the wire?

14:17:41 5 A. No. He wired that.

14:17:46 6 Q. Now, what other activity did you see in that particular

14:17:50 7 account?

14:17:51 8 A. On the next day, he went and made another deposit at -- a

14:17:58 9 total of 10,000 in that account, the next day. And then, he made

14:18:03 10 another deposit into his other account. So he had a total of

14:18:06 11 \$20,000 the next day.

14:18:16 12 Q. And so, what account did he make the first deposit in on

14:18:19 13 September 9th?

14:18:21 14 A. Either 1093 or at 1077.

14:18:26 15 Q. One of the two accounts, correct?

14:18:27 16 A. Correct.

14:18:33 17 Q. And 1093, he makes one account for how much? I'm sorry.

14:18:40 18 10,000?

14:18:40 19 A. Yeah.

14:18:44 20 Q. And then, he makes a deposit in another account? Was that

14:18:46 21 your testimony?

14:18:47 22 A. Yes, 1077. Account 1077.

14:18:49 23 Q. And how much was that?

14:18:51 24 A. Approximately 10,000, as well.

14:18:57 25 Q. And what was the total?

14:18:59 1 A. The total -- it was a CTR prepared on that day for a total
14:19:05 2 of \$21,500.

14:19:15 3 Q. So if we were to look at Government's Exhibit 352C, which
14:19:20 4 would be the Fernando Garcia CTRs, correct?

14:19:22 5 A. Yes.

14:19:23 6 Q. In this case, subject's date of birth is recorded?

14:19:44 7 A. Yes.

14:19:44 8 Q. And the deposits where they're made?

14:19:46 9 A. Yes.

14:19:49 10 Q. And then, the total amounts, correct?

14:19:52 11 A. Correct.

14:19:52 12 Q. So the one I just put on the board is a \$21,500?

14:19:56 13 A. Right.

14:19:56 14 Q. And the one we discussed with the map, is that that one
14:19:59 15 right there?

14:19:59 16 A. That's \$81,600.

14:20:04 17 Q. At some point, did Mr. Garcia stop using the Bank of America
14:20:12 18 accounts?

14:20:12 19 A. Well, he didn't use them as much in 2009. Then he picked up
14:20:18 20 more in 2010 at Wells Fargo account.

14:20:21 21 Q. And what did he use at the Wells Fargo account?

14:20:26 22 A. What was the question?

14:20:26 23 Q. I'm sorry. And you said the Wells Fargo account. What did
14:20:30 24 he use with the Wells Fargo account?

14:20:33 25 A. That's where a lot more cash was being deposited into that

14:20:36 1 account.

14:20:40 2 Q. At some point, did he begin using another account in Ruidoso

14:20:45 3 Downs?

14:20:45 4 A. Yes.

14:20:46 5 Q. And what activity did you see in that?

14:20:49 6 A. In the Ruidoso horsemen's account, there were like several

14:20:54 7 checks that Fernando authorized that he had written to himself.

14:21:00 8 Or there was one that I notice that went to Francisco

14:21:06 9 Colorado-Cessa.

14:21:07 10 Q. I'm going to show Government's Exhibit 231B, page 14-25.

14:21:22 11 What is this document right here, sir?

14:21:23 12 A. That's the horsemen's account for Poker Ranch.

14:21:26 13 Q. Poker Ranch, LLC?

14:21:28 14 A. Yes.

14:21:30 15 Q. And the address of that, for the record?

14:21:32 16 A. 6553 Star Court. Laredo, Texas.

14:21:37 17 Q. And on the next page here, page 26, who is listed here as

14:21:51 18 the authorized agent?

14:21:53 19 A. Fernando Garcia.

14:21:54 20 Q. Going to page 66, whose account is this?

14:22:07 21 A. Desiree Princess Ranch, LLC.

14:22:10 22 Q. Does it have the same address as Poker Ranch?

14:22:13 23 A. Yes.

14:22:14 24 Q. And, again, who's the authorized agent?

14:22:18 25 A. Fernando Garcia.

14:22:20 1 Q. We heard some testimony, the jury will recall, from
14:22:25 2 Alejandro Obregon. Do you recall who was the listed owner on the
14:22:30 3 documents for Desieree Princess Ranch?
14:22:32 4 A. I think it's Armando De la Vega.
14:22:36 5 Q. And for Poker Ranch?
14:22:37 6 A. Jorge Gomez.
14:22:44 7 Q. Turn your attention to page 97. What company is that for
14:22:53 8 the record?
14:22:53 9 A. Fast And Furious, LLC.
14:22:55 10 Q. And I believe the jury's heard from Mr. Hernando Guerra on
14:23:06 11 that. And, again, who's the -- listing as the -- not necessarily
14:23:11 12 the agent this time, but who's listed as the contact person?
14:23:14 13 A. Fernando Garcia.
14:23:15 14 Q. And this individual's account?
14:23:29 15 A. Santa Fe Roldan.
14:23:31 16 Q. And on here, how does it state the account was opened?
14:23:37 17 A. It was a check written by Fernando Garcia.
14:23:41 18 Q. On the back, based on the records, that's a check, correct?
14:23:49 19 Right there.
14:23:50 20 A. Yes.
14:23:53 21 Q. Sir, did you participate in the search warrant and arrest of
14:23:56 22 Fernando Garcia?
14:23:57 23 A. Yes, I did.
14:23:57 24 Q. And did you interview Mr. Garcia?
14:24:00 25 A. Yes, I did.

14:24:01 1 Q. Did you take a statement from Fernando Garcia?

14:24:03 2 A. Yes.

14:24:05 3 Q. And how did you organize your interview?

14:24:09 4 A. We asked him certain general questions. We read him his

14:24:13 5 Miranda rights first and asked him certain questions.

14:24:18 6 Q. Is Mr. Garcia an English speaker?

14:24:19 7 A. Yes.

14:24:20 8 Q. Did you have a Spanish-speaking agent there in case he

14:24:23 9 wanted one?

14:24:23 10 A. Yes.

14:24:24 11 Q. Do you recognize Fernando Garcia in the courtroom today?

14:24:27 12 A. Yes, I do.

14:24:27 13 Q. Is it the individual standing?

14:24:30 14 A. Yes.

14:24:30 15 Q. Is that the same person you interviewed?

14:24:32 16 A. Yes.

14:24:32 17 Q. Okay. Was he cooperative during his interview?

14:24:34 18 A. Yes.

14:24:35 19 Q. You said you read him his Miranda rights. Did you have a

14:24:39 20 list of prepared questions that you were going to ask him?

14:24:41 21 A. Yes, we did.

14:24:42 22 Q. Was that the same list that was put to every agent at every

14:24:46 23 single search warrant in this case?

14:24:48 24 A. Yes.

14:24:53 25 Q. And when you interviewed him, did you ask him if he knew

14:24:58 1 certain individuals?

14:24:59 2 A. Yes.

14:24:59 3 Q. If you will, could you please tell the ladies and gentlemen
14:25:03 4 of the jury about the interview with Fernando Garcia?

14:25:05 5 MR. ESPER: Your Honor, I would object to this
14:25:07 6 testimony. It violates the Bruton and the confrontation clause.
14:25:10 7 I object on that basis.

14:25:16 8 MR. GARDNER: Your Honor, we filed --

14:25:27 9 (At the bench, on the record.)

14:25:38 10 THE COURT: What's your objection?

14:25:41 11 MR. ESPER: My objection is, number one, he's getting
14:25:43 12 ready to testify to statements made to him -- post-arrest
14:25:48 13 statements made to him by Fernando Garcia. My objection is it
14:25:51 14 violates the confrontation clause and it violates the concepts in
14:25:55 15 Bruton vs. United States in that I believe he's going to testify
14:25:58 16 to certain statements made by Mr. Garcia that I believe are --
14:26:04 17 would be incriminating to my client, without me having the
14:26:07 18 opportunity to cross-examine Mr. Garcia, who is the declarant of
14:26:12 19 those statements.

14:26:14 20 MR. GARDNER: Your Honor, we filed our Bruton response
14:26:18 21 when we talked about that chat log. They've had the full context
14:26:22 22 right in Mr. Williams' report. The government's contention is
14:26:26 23 that he either identifies or declines to identify any association
14:26:30 24 with these people. What Mr. Esper left out is it has to be
14:26:34 25 incriminating statements. That -- may I finish Mr. Esper? Thank

14:26:37 1 you. You were about ready.

14:26:39 2 That statement needs to say, I was a crook and I'm
14:26:42 3 involved in crooked activity with this guy. Mr. Garcia made no
14:26:47 4 such statement. He merely said, I know this person, I work with
14:26:51 5 this person, or I don't know this person, or I met this person
14:26:54 6 and I met him a long time ago. He does not say these people, in
14:26:58 7 any statement as to any defendant, was involved in criminal
14:27:01 8 activity; therefore, it is not a Bruton statement. That was
14:27:06 9 briefed, and so, I believe that, also, Mr. Esper's objection was
14:27:09 10 untimely.

14:27:11 11 MR. ESPER: Well, your Honor, I think I brought this up
14:27:13 12 at a hearing where you said you could object to it when it comes
14:27:15 13 in, and that's what I'm doing. A statement that Mr. Garcia
14:27:19 14 makes, I anticipate, to this agent is he's asked about Mr.
14:27:22 15 "Chevo" Huitron, he says he doesn't know him or have anything to
14:27:25 16 do with him. There's evidence to the contrary to that fact.

14:27:30 17 MR. GARDNER: Absolutely.

14:27:31 18 MR. ESPER: So this is a left-handed and indirect way
14:27:33 19 of getting in something that they can't be permitted -- it is
14:27:36 20 incriminating -- may I please finish, Mr. Gardner? It's a
14:27:39 21 left-handed and indirect way of doing something they cannot do
14:27:41 22 directly. We have a right to cross-examine this -- the actual
14:27:45 23 declarant, not Mr. Williams, the actual declarant, Fernando
14:27:49 24 Garcia, as to those statements.

14:27:53 25 MR. MAYR: In other words, why he said that. We can't

14:27:55 1 explore why he --

14:27:57 2 MR. GARDNER: The objection --

14:27:57 3 THE COURT: One at a time.

14:28:00 4 MR. MAYR: Sure. We can't go into -- we can't inquire

14:28:04 5 as to why Mr. Garcia told this agent that. That's the problem.

14:28:10 6 MR. GARDNER: Your Honor, when they say it's

14:28:12 7 left-handed, but he hasn't provided any response to the

14:28:14 8 government's intention to introduce this evidence, if he says

14:28:16 9 it's left-handed, that means that it is incriminating, even

14:28:19 10 though incriminating statements -- these are non-incriminating

14:28:23 11 statements merely identified.

14:28:24 12 Now, Mr. Garcia chooses to lie, that's his choice, but

14:28:28 13 his lies are not directly incriminating. I agree with Mr. Esper.

14:28:32 14 There's other evidence out there that draws the inference that it

14:28:36 15 is criminally connected to him, but under the law it's not

14:28:38 16 left-handed. It's proper. And that's what we fully briefed in

14:28:43 17 our motion. Unless he can show me a case otherwise, I think it's

14:28:47 18 proper.

14:28:48 19 THE COURT: I don't know if he needs to show you a

14:28:51 20 case. He could have shown me a case. But I'll hear his

14:28:55 21 testimony outside the presence of the jury and find out what it

14:28:58 22 is.

14:29:05 23 How many of you know how many lights are in that jury

14:29:14 24 room? I'm going to put you in the jury room.

14:29:51 25 (Jury not present.)

14:30:01 1 THE COURT: Okay. Let's hear the testimony.

14:30:03 2 MR. GARDNER: Your Honor, first of all, I'd like to

14:30:05 3 direct the Court's attention to document 379. Specifically, the

14:30:08 4 summary of the memorandum of interview, which is attachment 3797,

14:30:14 5 filed on March 17th of this year.

14:30:19 6 THE COURT: 379.

14:30:21 7 MR. GARDNER: 379, your Honor, there are seven

14:30:23 8 attachments, one was a chat catalog. The other are Jose

14:30:28 9 Trevino's statement, Zulema Trevino's statement, Raul Ramirez's

14:30:33 10 statement, which is sort of overcome by events, Mr. Quintero's

14:30:38 11 statement, which is overcome by events, as well as Alexandra

14:30:43 12 Trevino's statement, which is also overcome by events. The

14:30:47 13 seventh one, your Honor, attachment seven is the Fernando Garcia

14:30:52 14 memorandum. And I would ask the Court to pull that up.

14:31:44 15 Your Honor, I can provide the Court the government's

14:31:46 16 copy of the memorandum of interview as the clerk's document.

14:35:24 17 Your Honor, that's essentially the statements I'll be striking

14:35:27 18 from the witness.

14:35:29 19 THE COURT: I think we'll let the witness go outside

14:35:31 20 for a minute.

14:35:32 21 MR. GARDNER: Okay. If you'll stand outside, Mr.

14:35:37 22 Williams.

14:36:01 23 THE COURT: You indicate that you intend to ask him if

14:36:07 24 he knows certain people, including the objector clients Huitrons.

14:36:21 25 MR. GARDNER: Huitron.

14:36:22 1 THE COURT: Regarded as saying he knows that Huitron is
14:36:25 2 a horse trainer and has been a trainer since 2005, but he's never
14:36:33 3 had any dealings with Huitron and that's Eusevio Huitron. He
14:36:44 4 also denies other people knowing, like Victor Lopez. All right.
14:36:50 5 So this statement will show that Mr. Garcia lied to a federal
14:36:56 6 agent.

14:36:58 7 MR. GARDNER: Yes, sir.

14:37:10 8 THE COURT: I guess I'll just ask counsel, how is that
14:37:18 9 incriminating to Eusevio Huitron when he says he knows him, he's
14:37:24 10 a trainer and he hadn't had any dealings with him?

14:37:31 11 MR. ESPER: Your Honor, it's not incriminating when he
14:37:33 12 says he knows him as a horse trainer. Clearly. That's not
14:37:35 13 incriminating. But it incriminating when he says, I've never had
14:37:39 14 any dealings with him because what it amounts to now is this
14:37:44 15 agent is stating what Mr. Garcia is telling him, and there's been
14:37:48 16 certainly evidence reflecting that arguably, Fernando Garcia has
14:37:54 17 had dealings with Mr. Huitron.

14:37:58 18 And so, he's making --

14:38:00 19 THE COURT: Other than showing that he's --

14:38:00 20 MR. ESPER: Lying about it.

14:38:04 21 THE COURT: Either all that evidence is wrong or he's
14:38:06 22 lying. What does that show?

14:38:08 23 MR. ESPER: Well, it deprives me the opportunity of
14:38:11 24 cross-examining Mr. Garcia as to why --

14:38:13 25 THE COURT: To prove that all the other evidence that's

14:38:17 1 come into the record is.

14:38:19 2 MR. ESPER: It deprives me the opportunity of
14:38:20 3 questioning him as to why he would lie about something like that.
14:38:24 4 I can't ask Mr. Williams that.

14:38:29 5 THE COURT: Oh, lord.

14:38:32 6 MR. GARDNER: Your Honor, we would also mention that
14:38:34 7 it's not hearsay because it's not offered for the truth because
14:38:38 8 it's a lie. And confrontation clause is only triggered by
14:38:42 9 hearsay.

14:38:44 10 MR. ESPER: Well, you're offering it to prove he's
14:38:45 11 lying about what the truth is.

14:38:47 12 MR. GARDNER: Well, it's still not the truth. That's
14:38:50 13 what the definition of lying is.

14:38:52 14 MR. ESPER: It's truth of the matter asserted.

14:38:55 15 MR. GARDNER: Yes, sir.

14:38:56 16 MR. ESPER: I know the statement is a lie.

14:38:57 17 THE COURT: What other, other than to prove that he
14:38:59 18 lied about not working with.

14:39:02 19 MR. GARDNER: He's got a statement in there, also, with
14:39:03 20 regards to Mr. Nayen, your Honor, that is not the truth either.
14:39:09 21 And, your Honor --

14:39:10 22 THE COURT: There's a lot of statements there that's
14:39:13 23 not the truth if the other evidence is accurate.

14:39:15 24 MR. GARDNER: Yes, sir.

14:39:16 25 THE COURT: But what other do you intend to go into?

14:39:20 1 MR. GARDNER: Your Honor, you have my only copy.

14:39:22 2 THE COURT: Pardon?

14:39:23 3 MR. GARDNER: You have my only copy. Thank you.

14:39:31 4 The your Honor, he talks about training specifically

14:39:34 5 for Bonanza Racing Stables and no other company. And the

14:39:38 6 evidence that was just shown to the jury shows that he's working

14:39:43 7 for Poker Ranch, Desiree Ranch, Santa Fe Roldan. So he wasn't

14:39:47 8 being truthful about that.

14:39:55 9 Your Honor, in paragraph 3, that, I believe, is

14:39:58 10 actually probably somewhat of a -- well, the first part's true.

14:40:01 11 The second part is his limited involvement with Jose Trevino.

14:40:05 12 The evidence obtained from the search warrants site would

14:40:08 13 demonstrate that that was a lie.

14:40:10 14 THE COURT: He even testified he'd never heard of Jose

14:40:15 15 Trevino's brothers.

14:40:17 16 MR. GARDNER: Yes, sir.

14:40:18 17 THE COURT: Only one on the planet.

14:40:21 18 MR. GARDNER: Yes, sir.

14:40:22 19 THE COURT: All right. So do you intend to go into his

14:40:29 20 statement, after he was warned that he never had any dealings

14:40:43 21 with Eusevio Huitron?

14:40:45 22 MR. GARDNER: He also says he does not know Alfonso Del

14:40:50 23 Rayo-Mora, despite the fact there's a picture of him standing

14:40:52 24 next to him.

14:40:55 25 THE COURT: And he said he never knew of Omar or.

14:41:07 1 MR. GARDNER: Yes, your Honor. And there's a item that
14:41:09 2 the government will introduce later, found on his computer, that
14:41:12 3 is a article about the Los Zetas that was taken at the time of
14:41:16 4 his arrest, which would indicate that it, also, is a lie.

14:41:23 5 THE COURT: All right. Anybody else have any objection
14:41:25 6 other than Mr. Esper?

14:41:26 7 MR. GARDNER: We would -- I'm sorry, your Honor, I
14:41:28 8 apologize. We would also ask that the proper Bruton -- well, not
14:41:31 9 Bruton, because it's not Bruton, the proper limiting instruction
14:41:34 10 to the jury.

14:41:35 11 THE COURT: I'll give an instruction that they could
14:41:37 12 only consider it against Mr. Garcia, of course, and can't
14:41:41 13 consider it against any other defendants.

14:41:44 14 MR. WOMACK: In addition to the information that Mr.
14:41:46 15 Gardner's talked about just now, during my cross-examination, I'm
14:41:50 16 going to have to bring up the fact that because of this
14:41:53 17 money-laundering stuff, that my client first met Messrs. Colorado
14:41:59 18 and Trevino in 2010 because these check transactions were done in
14:42:05 19 2008, before he even knew this gentleman. I need to bring that
14:42:09 20 up. But, again, that's part of his statement to the agent is I
14:42:12 21 knew him, and that might be incriminating to them. And my client
14:42:20 22 hasn't taken the stand and there's no reason to think he will.

14:42:27 23 I'd also point out one last thing and you probably saw
14:42:29 24 it, sir. The interviews happened on February 12th of 2012. This
14:42:37 25 memo was created on June 29th, four-and-a-half months later.

14:42:42 1 MR. GARDNER: Your Honor, that's a typo. The interview
14:42:45 2 occurred when he was arrested on June 12th.

14:42:50 3 MR. WOMACK: I've got the document, it says June 29th.
14:42:52 4 If it's wrong, it's wrong.

14:42:54 5 MR. GARDNER: It's wrong, yeah. Typo.

14:43:02 6 MR. WOMACK: That's all.

14:43:05 7 MS. WILLIAMS: I don't have anything to weigh in on
14:43:06 8 this issue, Judge, but I do have something I do need to alert the
14:43:09 9 Court. So.

14:43:10 10 THE COURT: Why not now?

14:43:12 11 MS. WILLIAMS: Your Honor, I was informed this morning
14:43:14 12 that Hector Moreno, who's previously testified in this case, as
14:43:21 13 well as Mario Cuellar, who's testified in this case, have a
14:43:26 14 pending arrest warrant in Mexico for aggravated kidnapping and
14:43:31 15 murder. I have taken some time to try to sort that out, but I
14:43:35 16 have not yet been able to, although I do have a copy of what I
14:43:40 17 believe to be the arrest warrant, as well as two police reports.
14:43:45 18 There are photographs included in the police reports, so I feel
14:43:48 19 fairly competent that we're talking about the same people.

14:43:52 20 In light, especially of the testimony of Hector Moreno
14:43:57 21 that he left Mexico because he was afraid of the Zetas, I think
14:44:04 22 that it becomes increasingly more important to find out exactly
14:44:07 23 what agreements Mr. Moreno made with the United States with
14:44:13 24 regard to coming here, and what the government might have
14:44:18 25 known -- not this government but the government might have known

14:44:21 1 about the existence of this warrant. It was signed, I believe,
14:44:26 2 your Honor, on July the 25th of 2012.

14:44:30 3 MR. FINN: And, Judge, there are some Spanish-speaking
14:44:32 4 lawyers that are associated with this case and they've looked at
14:44:35 5 this. We haven't translated it yet, but we can make a good-faith
14:44:39 6 representation to the Court that this is valid.

14:44:42 7 MR. GARDNER: What was the date again?

14:44:45 8 THE COURT: 2012.

14:44:47 9 MR. GARDNER: After their arrests?

14:44:49 10 MS. WILLIAMS: That the warrant was issued. I have no
14:44:50 11 idea yet when this supposedly happened, but that the warrant was
14:44:54 12 issued on July 25th of 2012.

14:44:57 13 MR. FINN: And, Judge, I've been told -- I don't know
14:44:58 14 this to be a fact, that, you know, there's aggravating kidnapping
14:45:02 15 and there's murder that, for whatever reason, kidnapping is
14:45:05 16 considered to be a more serious offense in Mexico than even
14:45:08 17 murder.

14:45:10 18 THE COURT: Well, I have no certifications of any
14:45:16 19 nature in front of me that would make any of this admissible.

14:45:19 20 MS. WILLIAMS: Judge, I'm not asking for it to be.

14:45:21 21 THE COURT: You're just giving me a heads up and I
14:45:23 22 appreciate it.

14:45:24 23 MS. WILLIAMS: I'm just giving you a heads up. Over
14:45:25 24 the week and I intend to have these translated, we'll kind of
14:45:28 25 sort that out. But I just wanted to give you a heads up and the

14:45:31 1 government a heads up that I think that information that has been
14:45:33 2 asked for previously contains a lot more relevance.

14:45:39 3 THE COURT: All right. Now, let's go back to first
14:45:42 4 base, and that is, other than what's going to come up on
14:45:53 5 cross-examination is neither here nor there because it's not up
14:45:58 6 yet. Just run through my mind again, you want to ask him about
14:46:31 7 his activities with Mr. Huitron. He doesn't know other people,
14:46:52 8 Alfonso de Rayo-Mora, Victor Lopez, never gone to Mexico with
14:47:07 9 Nayen. He doesn't know who Miguel Trevino Morales or Omar
14:47:22 10 Trevino-Morales --

14:47:24 11 MR. GARDNER: And, your Honor --

14:47:25 12 THE COURT: -- was.

14:47:26 13 MR. GARDNER: Sorry. Just to add there, in paragraph 1
14:47:29 14 where he identifies -- when asked, he only identifies Bonanza and
14:47:32 15 Garcia Bloodstock, he does not identify any association with the
14:47:38 16 other nominee companies as the government's alleged.

14:47:43 17 THE COURT: All right.

15:03:31 18 (Recess.)

15:03:54 19 THE COURT: Jaye, make this Court Exhibit 4. I'm
15:04:11 20 making the report Court Exhibit No. 4, since I've read it before
15:04:20 21 I make a legal determination, and I sustain the objection. I'm
15:04:25 22 not going to permit the conversations, notwithstanding for the
15:04:32 23 record, I don't think a couple of them are incriminatory in any
15:04:36 24 way, shape or form, but they're statements made after the
15:04:40 25 conspiracy and that's the evidence I've heard so far. I think

15:04:52 1 we'll stay with a clean record.

15:04:53 2 MR. GARDNER: Got it, your Honor.

15:04:56 3 MR. WOMACK: So, sir, that's as to the entirety of this

15:04:59 4 interview?

15:04:59 5 THE COURT: Pardon me?

15:05:00 6 MR. WOMACK: That's as to the entirety, correct, sir?

15:05:03 7 THE COURT: Any statements made by Mr. Garcia.

15:05:09 8 MR. WOMACK: Thank you.

15:05:15 9 MR. GARDNER: I understand the Court's ruling. Thank

15:05:17 10 you, sir.

15:05:18 11 THE COURT: Okay. Bring the jury in.

15:05:34 12 (Jury present.)

15:07:15 13 THE COURT: Mr. Williams, you're still under oath.

15:07:18 14 THE WITNESS: Okay.

15:07:19 15 THE COURT: You may proceed.

15:07:20 16 Q. (BY MR. GARDNER) Special Agent Williams, we were talking

15:07:22 17 about the search warrant. And I want to show you a exhibit taken

15:07:25 18 from Fernando Garcia in New Mexico, Government's Exhibit 128A.

15:07:41 19 Do you recognize this, sir?

15:07:42 20 A. Yes, I do.

15:07:45 21 Q. And this is what?

15:07:47 22 A. Bank records for Bonanza Racing Stables.

15:07:50 23 Q. And so, what is this particular document here?

15:07:53 24 A. That's for the authorization form that give signature

15:07:58 25 rights.

15:07:59 1 Q. And whose name is it?

15:08:01 2 A. Francisco Silva-Ramos.

15:08:03 3 Q. And does it appear to be Mr. Ramos' signature down here?

15:08:06 4 A. Yes.

15:08:07 5 Q. Now, back of page 2 appears to be a Wells Fargo sticky?

15:08:16 6 A. Yes.

15:08:17 7 Q. And for the record, what does it say?

15:08:18 8 A. Please sign and return.

15:08:22 9 Q. Also located with this, do you find taxpayer number

15:08:26 10 identification?

15:08:26 11 A. Yes.

15:08:28 12 Q. Page 4. And, sir, can you tell me what this page?

15:08:36 13 A. It looks like an individual that's practicing the signature

15:08:40 14 of Francisco Silva-Ramos.

15:08:43 15 Q. I'm showing you page 1. Is that the signature?

15:08:46 16 A. Yes.

15:08:47 17 Q. So when you compare these, does it appear to be a similar

15:08:52 18 set of signatures as is on page 1 of the authorization form?

15:08:55 19 A. Yes.

15:08:56 20 Q. And, again, whose possession was this one found?

15:08:58 21 A. In Fernando Garcia's.

15:09:03 22 Q. And I'm showing you 128B. What is this, sir?

15:09:15 23 A. Bonanza Racing Stables bank statement.

15:09:19 24 Q. Let me flip it over. What does this \$100,000 reflect?

15:09:32 25 A. The opening deposit that was made.

15:09:34 1 Q. Did you -- were you able to determine any other activity
15:09:37 2 from this bank other than that opening deposit?

15:09:39 3 A. No.

15:09:40 4 Q. I want to show you Government's Exhibit 24 by stipulation
15:10:02 5 found at Jose Trevino's property in Lexington, Oklahoma. What is
15:10:08 6 that, sir?

15:10:09 7 A. It's a statement that shows Garcia Bloodstock in care of
15:10:14 8 Jose Trevino, their connection.

15:10:21 9 Q. I want to show you Government's Exhibit 371A, B and C. Do
15:10:38 10 you recognize those, sir?

15:10:40 11 A. Yes, I do.

15:10:41 12 Q. And are those photos taken from the search warrant in New
15:10:44 13 Mexico?

15:10:44 14 A. Yes.

15:10:45 15 Q. Is that the search warrant where Mr. Garcia was arrested?

15:10:47 16 A. Yes.

15:10:49 17 Q. Your Honor, I offer Government's Exhibit 371A, B and C.
15:10:57 18 MR. WOMACK: No objection.

15:10:58 19 THE COURT: All right. A, B and C of 371 are received.

15:11:02 20 Q. (BY MR. GARDNER) Now, was this the automobile that Mr.
15:11:09 21 Garcia was driving?

15:11:10 22 A. Yes, it was.

15:11:13 23 Q. What's the significance of that plate number?

15:11:15 24 A. That plate is registered to Jose Trevino.

15:11:19 25 THE COURT: Before we do that, which exhibit is that?

15:11:24 1 MR. GARDNER: I'm sorry, your Honor. That's 371A.

15:11:26 2 THE COURT: All right.

15:11:30 3 Q. (BY MR. GARDNER) Showing you 371B. What's that a photo of,

15:11:39 4 sir?

15:11:42 5 A. That is a certificate of veterinary inspection. That was a

15:11:46 6 document that was found inside the car.

15:11:48 7 Q. And I'm showing you Government's Exhibit 135. Is that the

15:11:53 8 same veterinarian inspection slip?

15:11:55 9 A. Yes.

15:12:00 10 Q. And for the record, could you please state the date that's

15:12:06 11 located on that document?

15:12:07 12 A. February 2, 2012.

15:12:11 13 Q. And in whose name?

15:12:12 14 A. Jose Trevino.

15:12:15 15 Q. Again, where was this found?

15:12:18 16 A. In New Mexico.

15:12:19 17 Q. And was it found in the car registered to Jose Trevino?

15:12:22 18 A. Yes.

15:12:23 19 Q. Showing you Government's Exhibit 137, also by stipulation,

15:12:41 20 taken from the Defendant Fernando Garcia in New Mexico. What is

15:12:55 21 this, sir?

15:12:56 22 A. That's another statement found in New Mexico where it shows

15:13:04 23 his connection to Eusevio Huitron.

15:13:07 24 Q. The jury has heard the name of this horse, but for the

15:13:09 25 record, could you read that in?

15:13:11 1 A. Tamaulipas Boy.

15:13:14 2 Q. Your Spanish is not very good, is it?

15:13:16 3 A. No.

15:13:18 4 Q. Would that be Tamaulipas?

15:13:19 5 A. Tamaulipas. I guess so.

15:13:22 6 THE COURT: What number is that?

15:13:24 7 MR. GARDNER: Again, your Honor, that's Government's

15:13:26 8 Exhibit 137.

15:13:28 9 Q. (BY MR. GARDNER) Was this the envelope in which it was

15:13:32 10 found?

15:13:33 11 A. Yes.

15:13:35 12 Q. So addressed to Fernando Garcia, a bill for Eusevio Huitron?

15:13:41 13 A. Right. Yes.

15:13:42 14 Q. In all fairness, it was paid for, correct?

15:13:45 15 A. Yes. It was paid for.

15:13:53 16 Q. I'm showing you Government's Exhibit 139, also by

15:13:56 17 stipulation found in New Mexico. Do you recognize 139, sir?

15:14:02 18 A. Yes, I do.

15:14:03 19 Q. And speed things up, it's a Fed Ex envelope, is it not?

15:14:08 20 A. Yes. It is a Fed Ex.

15:14:11 21 Q. And whose name is it in?

15:14:12 22 A. Jesus Huitron and the company Huitron Homes.

15:14:20 23 Q. While my mind's on the Fed Ex envelope, yesterday, the jury

15:14:27 24 heard some testimony with regards to a voided check.

15:14:43 25 Specifically, I'll ask the jury to recall the testimony -- and

15:14:46 1 this is Government's Exhibit 6 by stipulation taken from
15:14:49 2 Lexington, Oklahoma.

15:14:59 3 Special Agent Williams, I know you weren't in the
15:15:01 4 courtroom, but the jury saw this check on the testimony of Brian
15:15:06 5 Schutt, and the testimony was -- or the indication was this check
15:15:11 6 was lost. Did you review this check?

15:15:13 7 A. Yes, I did.

15:15:13 8 Q. And what on this check indicates to you it was not, in fact,
15:15:18 9 lost?

15:15:18 10 A. That it -- it's the original check and it's voided, and on
15:15:23 11 the back of it, it was endorsed by Hernando Guerra.

15:15:35 12 Q. So, again, if we turn over to the back, there appears to be
15:15:39 13 an endorsement by Hernando Guerra?

15:15:43 14 A. Yes.

15:15:44 15 Q. Yet, that check is voided?

15:15:45 16 A. Correct.

15:15:46 17 Q. And, again, for the record, is that the purchase of Blues
15:15:53 18 Ferrari?

15:15:53 19 A. Yes.

15:15:54 20 Q. What is unusual -- give me one second. Who is Hernando
15:16:06 21 Guerra associated with?

15:16:07 22 A. Fast And Furious.

15:16:08 23 Q. That's stated here?

15:16:11 24 A. Yes.

15:16:19 25 Q. So Hernando Guerra's signature, at least one point,

15:16:23 1 indicates he touched that check?

15:16:25 2 A. Yeah. That he received it, yes.

15:16:28 3 Q. Going back to the subject of Mr. Garcia. Showing you

15:16:33 4 Government's Exhibits 58A and 58B by stipulation taken from

15:16:41 5 Eusevio and Jesus Huitron. 58A, a race photo; is that correct?

15:16:51 6 A. Yes.

15:16:52 7 Q. Okay. The horse's name in this case is Jukebox Zoom. So

15:16:57 8 it's Fernando Garcia, owner and Eusevio Huitron, trainer?

15:17:01 9 A. Yes.

15:17:02 10 Q. And 58B is a horse called Reba Reba Corona and who's the

15:17:08 11 owner?

15:17:08 12 A. Garcia Bloodstock and Racing.

15:17:10 13 Q. And who's the trainer?

15:17:12 14 A. Erika Huitron.

15:17:14 15 Q. Do you know if Erika Huitron is associated with Jesus and

15:17:17 16 Eusevio Huitron?

15:17:18 17 A. Yes.

15:17:26 18 Q. Showing you Government's Exhibit 138 by stipulation taken

15:17:31 19 from the Defendant Fernando Garcia in New Mexico. What are

15:17:38 20 those, sir?

15:17:40 21 A. Membership ID cards for American Quarter Horse Association.

15:17:44 22 Q. Bonanza Racing Stables on top?

15:17:46 23 A. Yes.

15:17:47 24 Q. And who on the bottom part?

15:17:49 25 A. Luis Gerardo Aguirre.

15:17:51 1 Q. And, again, the evidentiary significance of that?

15:17:53 2 A. It shows his connection to Luis Aguirre.

15:18:00 3 Q. And, again, these were all in Mr. Garcia's -- are the ones

15:18:04 4 identified from Mexico were all in Mr. Garcia's possession?

15:18:06 5 A. Yes.

15:18:07 6 Q. Okay. Showing you Government's Exhibit 134 taken by

15:18:16 7 stipulation from Mr. Fernando Garcia in New Mexico. Do you

15:18:22 8 recognized that, sir?

15:18:23 9 A. Yes. State of New Mexico Racing Commission ID badge.

15:18:28 10 Q. Sir, have you reviewed the pocket trash testified to by the

15:18:35 11 Customs and Border Protection officer?

15:18:37 12 A. Yes.

15:18:38 13 Q. Is this the same card that you saw on that exhibit?

15:18:40 14 A. Yes.

15:18:55 15 Q. Showing you what has been taken from Fernando Garcia by

15:18:58 16 stipulation, Government's Exhibit 142A from New Mexico. What is

15:19:03 17 this, sir?

15:19:14 18 A. That is a Poker Ranch horsemen's account.

15:19:17 19 Q. And, again, this was in Mr. Garcia's possession?

15:19:19 20 A. Yes.

15:19:22 21 THE COURT: What?

15:19:24 22 MR. GARDNER: 142A, your Honor.

15:19:26 23 THE COURT: But what ranch?

15:19:29 24 MR. GARDNER: Poker Ranch.

15:19:30 25 THE WITNESS: Poker Ranch.

15:19:31 1 Q. (BY MR. GARDNER) And 142B, whose horsemen's account is that?

15:19:38 2 A. Desiree Princess Ranch and, also, the statements that you're

15:19:42 3 putting back on there, also, it shows that those checks were

15:19:45 4 written to Fernando Garcia that you put your finger back on.

15:19:50 5 Q. The checks that were found with the exhibit. The paid name

15:19:54 6 is Fernando Garcia?

15:19:55 7 A. Exactly. And that was on Poker Ranch, as well.

15:20:05 8 Q. Government's Exhibit 179 taken by stipulation from the

15:20:13 9 Dallas residence of Jose Trevino. What is that, sir?

15:20:24 10 A. It's the envelope that's for Poker Ranch and for Fernando to

15:20:29 11 pick up. And these were tickets that was found in Jose Trevino's

15:20:34 12 search warrant stuff.

15:20:35 13 Q. And inside are the actual tickets to the Turf Club in

15:20:41 14 Ruidoso for the All American Futurity for 2011?

15:20:45 15 A. Yes.

15:20:50 16 Q. And, again, the evidentiary significance?

15:20:52 17 A. It shows his connection to Jose Trevino.

15:21:03 18 Q. I'm showing you Government's Exhibit 132, also by

15:21:06 19 stipulation, taken from Fernando Garcia in New Mexico. 132,

15:21:11 20 series of one, two, three, four, five AQHA registration

15:21:21 21 certificates. This is a horse called Adan Farias -- I'm sorry,

15:21:32 22 Don Hervy. This is what I was getting to. Whose name is at the

15:21:35 23 top in pencil?

15:21:36 24 A. Adan Farias.

15:21:38 25 Q. And the name of the current owner?

15:21:40 1 A. Garcia Bloodstock and Racing.

15:21:48 2 Q. And the second page, what's the name of the horse?

15:21:50 3 A. Corona James.

15:21:52 4 Q. And who is the owner listed on this horse?

15:21:54 5 A. Sergio Rincon.

15:22:05 6 Q. And who is the horse previously owned by?

15:22:08 7 A. Francisco Colorado-Cessa.

15:22:11 8 Q. So it went from Francisco Colorado-Cessa to Sergio Rincon?

15:22:17 9 A. Yes.

15:22:18 10 Q. And whose possession was it?

15:22:20 11 A. Fernando Garcia's.

15:22:24 12 Q. Horse called BP Hesa Jess. Who's the registered owner?

15:22:29 13 A. Poker Ranch.

15:22:36 14 Q. And attached to the back is what the jury has heard referred

15:22:38 15 to as a Coggins report. Who is listed on the Coggins report as

15:22:47 16 the name and address?

15:22:48 17 A. Eusevio Huitron.

15:22:53 18 Q. And the next horse is called Loose Chick. And who is listed

15:23:04 19 as the current owner?

15:23:05 20 A. Francisco Colorado-Cessa.

15:23:10 21 Q. And this is a horse called Molotov?

15:23:13 22 A. Yes.

15:23:13 23 Q. And who's the current owner?

15:23:14 24 A. Carmina, LLC.

15:23:16 25 Q. And who do you know Carmina, LLC to be associated with?

15:23:19 1 A. Carlos Nayen.

15:23:21 2 Q. And who's listed in the top right-hand corner?

15:23:24 3 A. "E" stands for Eusevio Huitron.

15:23:30 4 Q. Again, what's the significance of that?

15:23:31 5 A. Shows their connection.

15:23:33 6 Q. Special Agent Williams, was that the -- what you attempt to

15:23:37 7 do in a law enforcement investigation, sir, the connections?

15:23:39 8 A. Yes, we do.

15:23:40 9 Q. And why is that?

15:23:41 10 A. Show the environment of what you call a conspiracy.

15:23:46 11 MR. ESPER: Objection, your Honor. He's invading the

15:23:48 12 province of the jury.

15:23:50 13 MR. GARDNER: I'll rephrase and ask another question.

15:23:55 14 Q. (BY MR. GARDNER) Is one of the things the government has to

15:23:57 15 prove is knowledge?

15:23:58 16 A. Yes.

15:23:59 17 Q. Not only knowledge of the underlying offense but knowledge

15:24:02 18 of other coconspirators?

15:24:04 19 A. Yes.

15:24:05 20 Q. And does that evidence that you reviewed and selected, at

15:24:09 21 least in your understanding, help demonstrate that?

15:24:12 22 A. Yes.

15:24:14 23 MR. MAYR: Objection, your Honor. Again, it goes to an

15:24:16 24 ultimate conclusion, and invades the province of the jury, and

15:24:18 25 inadmissible under 704.

15:24:21 1 MR. GARDNER: Your Honor, that's all the questions I
15:24:23 2 have.

15:24:24 3 THE COURT: The last answer, do not consider for any
15:24:28 4 purpose, although it was a late objection. You stood up, you
15:24:32 5 waited till the answer and then, you objected.

15:24:34 6 MR. MAYR: Well, but the problem is the answer, your
15:24:37 7 Honor, is -- he goes a little bit beyond what the question -- I
15:24:40 8 can't anticipate the questions and I apologize.

15:24:43 9 THE COURT: All right. I've sustained the objection.
15:24:47 10 The jury will not consider it.

15:24:48 11 MR. GARDNER: Thank you, your Honor. I pass the
15:24:49 12 witness.

15:24:50 13 THE COURT: All right. Ms. Williams.

15:24:54 14 CROSS-EXAMINATION

15:24:54 15 BY MS. WILLIAMS:

15:25:11 16 Q. Good afternoon.

15:25:12 17 A. Hi.

15:25:13 18 Q. I'm handing you what's been marked as Government's Exhibit
15:25:15 19 264 and it's admitted. Can you tell the members of the jury what
15:25:19 20 that is?

15:25:19 21 A. It's a signature card for IBC for Tyler Graham.

15:25:29 22 Q. It's an IBC Bank account for Tyler Graham?

15:25:33 23 A. Correct.

15:25:33 24 Q. And when was that account opened? June 28, 2010?

15:25:45 25 A. Let me find the date on it.

15:25:57 1 Q. It's on that first page.

15:26:05 2 A. Okay, yeah. June 28, 2010.

15:26:09 3 Q. All right. After the date of the opening of that bank

15:26:11 4 account, a check was deposited; is that correct?

15:26:25 5 A. Yes. There was a deposit made. Yes.

15:26:27 6 Q. And it was a check?

15:26:28 7 A. Yes.

15:26:30 8 Q. \$2,855?

15:26:36 9 A. Correct.

15:26:37 10 Q. On the same date that it was opened?

15:26:39 11 A. Correct.

15:26:42 12 Q. All right. Then over a period of two days, a couple of

15:26:47 13 things happen. There are a series of \$9,000 deposits made in

15:26:56 14 cash into that bank account?

15:26:58 15 A. Correct.

15:26:59 16 Q. True?

15:27:00 17 A. Yes.

15:27:00 18 Q. All right. So on July the 13th, \$9,000 is deposited?

15:27:13 19 A. Correct.

15:27:14 20 THE COURT: Are you saying July the 13th?

15:27:18 21 MS. WILLIAMS: I did, your Honor.

15:27:19 22 THE COURT: And the account was opened.

15:27:21 23 MS. WILLIAMS: Opened on June 28th.

15:27:23 24 THE COURT: Okay.

15:27:32 25 Q. (BY MS. WILLIAMS) And then, at that same branch, I don't

15:27:36 1 know if you can tell what time it is. I sure can't. Another
15:27:44 2 \$9,000 is deposited?

15:27:45 3 A. Right.

15:27:45 4 Q. And then, on that same date at a different branch of IBC
15:27:50 5 bank, another \$9,000 was deposited.

15:27:55 6 A. Correct.

15:27:56 7 Q. And then, some money was taken out, \$1,700; is that right?

15:28:14 8 A. Yes. Right.

15:28:15 9 Q. Is it in cash? Can you tell?

15:28:17 10 A. No. It was a check.

15:28:18 11 Q. It was a check. So like he wrote a check to himself?

15:28:37 12 A. No. He wrote a check to.

15:28:39 13 Q. Somebody else?

15:28:39 14 A. Yeah.

15:28:40 15 Q. All right. Then, the next day, on July the 14th, 2010, back
15:28:46 16 at the original branch, branch 130, another deposit of \$9,000 was
15:28:59 17 made.

15:29:00 18 A. Correct.

15:29:03 19 THE COURT: What date was that, counsel?

15:29:05 20 MS. WILLIAMS: July the 14th, 2010.

15:29:09 21 Q. (BY MS. WILLIAMS) And, again, on July 14, 2010 at branch
15:29:12 22 130, another \$9,000.

15:29:15 23 A. Right.

15:29:17 24 Q. And just as in the previous day, the third deposit is made
15:29:22 25 at branch 101 for another \$9,000?

15:29:28 1 A. Correct.

15:29:29 2 Q. And then, on July the 27th of 2010, what happened? It's the

15:29:40 3 last thing -- I mean, this is all the transactions in this

15:29:43 4 account, right? Everything I've described is what happens in

15:29:46 5 this account.

15:29:49 6 A. Let me get to the last page and check. Yeah. There were

15:30:05 7 two checks, three checks written. Oh, no, no, no.

15:30:10 8 Q. Two checks?

15:30:11 9 A. Two.

15:30:11 10 Q. Right? Two checks. Two cashier's checks, I think.

15:30:27 11 A. Yeah. Two cashier's checks. Yes.

15:30:32 12 Q. One to Heritage Place?

15:30:35 13 A. Right.

15:30:37 14 Q. And one to Tyler Graham?

15:30:39 15 A. Correct.

15:30:42 16 Q. Now, this activity that takes -- well, do you see in this

15:30:47 17 bank account -- and maybe it wouldn't be here. But do you have

15:30:51 18 any evidence that a suspicious activity report was filed as a

15:30:54 19 result of this activity?

15:30:55 20 A. A suspicious activity report, no.

15:30:58 21 Q. Should it have been?

15:31:00 22 A. That would be depending on the branch. Those are not

15:31:03 23 required forms to be filed.

15:31:04 24 Q. All right. What would you call this activity that took

15:31:09 25 place on July 13 and July 14?

15:31:12 1 A. Possibly structuring transactions.

15:31:16 2 Q. No further questions.

15:31:26 3 MR. SANCHEZ: No questions.

15:31:28 4 MR. WOMACK: Just a few, your Honor.

15:31:30 5 CROSS-EXAMINATION

15:31:30 6 BY MR. WOMACK:

15:31:33 7 Q. Mr. Williams, how are you doing?

15:31:35 8 A. I'm doing fine.

15:31:36 9 Q. We've met before, haven't we?

15:31:38 10 A. Yes, we have.

15:31:39 11 Q. Handful of questions about this bank account.

15:31:41 12 A. Okay.

15:31:41 13 Q. On --

15:31:42 14 A. The same bank account or which bank account?

15:31:45 15 Q. Garcia Bloodstock, Fernando Garcia. And you know Fernando

15:31:48 16 Garcia?

15:31:48 17 A. Yes.

15:31:49 18 Q. Stand up. You know him?

15:31:50 19 A. Yeah.

15:31:51 20 Q. Okay. Have a seat.

15:31:54 21 In September of 2008.

15:31:58 22 A. Right.

15:32:00 23 Q. On the day that Fernando Garcia opened his company, Garcia

15:32:06 24 Bloodstock and Racing?

15:32:06 25 A. Correct.

15:32:07 1 Q. You told us he made around -- I think it was \$81,000 in
15:32:12 2 deposits?

15:32:13 3 A. Yes.

15:32:15 4 Q. And that was the money basically to establish his account,
15:32:18 5 his bank account for his company, correct?

15:32:20 6 A. I don't know what he had the \$90,000 for.

15:32:25 7 Q. Right. But remember it was the initial deposit. When you
15:32:27 8 open a bank account, you have to put something in it.

15:32:29 9 A. Well, the initial deposit was just \$9,000 at FirstBank at El
15:32:33 10 Conquistador. Not 80,000.

15:32:36 11 Q. Okay. So during that timeframe he opened a bank account,
15:32:39 12 the same day that he started his company, he made a deposit of
15:32:44 13 \$9,000 in the bank?

15:32:46 14 A. Right.

15:32:46 15 Q. That was a brand-new bank account opened that day?

15:32:49 16 A. Right.

15:32:49 17 Q. And you told us that he made a series of deposits, like
15:32:53 18 \$9,000 each totaling around 80 -- I think it was 81,000 or more?

15:32:57 19 A. Yes.

15:32:57 20 Q. Okay. And to you, as a trained IRS agent, that would look
15:33:04 21 very suspicious, wouldn't it?

15:33:06 22 A. Yes.

15:33:07 23 Q. Now, would you agree with me that to be guilty of
15:33:12 24 structuring, the depositor, the person taking the money and
15:33:18 25 depositing it into the bank would have to know that the bank has

15:33:23 1 a requirement of making a report of some kind to the IRS any time
15:33:30 2 you make a deposit of more than \$10,000, correct? Is that part
15:33:34 3 of it?

15:33:35 4 A. Could you rephrase that now?

15:33:36 5 Q. Yeah. I'm trying to make it very simple for me.

15:33:42 6 To commit structuring, which is a criminal offense or
15:33:46 7 can be -- to commit structuring, the person making the deposit,
15:33:53 8 the depositor, we'll call him.

15:33:56 9 A. Right.

15:33:56 10 Q. First would have to know that a bank has a requirement that
15:34:02 11 when someone makes a deposit of more than \$10,000 cash, they, the
15:34:07 12 bank has to report that in this Currency Transaction Report to
15:34:11 13 the IRS?

15:34:13 14 MR. GARDNER: Your Honor, may I approach?

15:34:14 15 THE COURT: You may.

15:34:21 16 MR. GARDNER: I'm sorry.

15:34:22 17 (At the bench, on the record.)

15:34:31 18 MR. GARDNER: Your Honor, Mr. Womack's line of
15:34:32 19 questioning, I believe he's kicking open the door for me to start
15:34:35 20 asking about all these lies to show he has knowledge. And I
15:34:43 21 understand the Court's ruling, and I agree with it under the
15:34:46 22 circumstances, but what Mr. Womack is asking is whether we can't
15:34:50 23 show there's knowledge under structure. All the lies in his
15:34:53 24 statements should come in to show he has knowledge of
15:34:57 25 structuring.

15:34:58 1 MS. FERNALD: With a limiting instruction on Bruton in
15:35:04 2 order to state the appellate record.

15:35:04 3 MR. WOMACK: None of these statements talk about
15:35:06 4 structuring.

15:35:06 5 THE COURT: What?

15:35:07 6 MR. WOMACK: None of the statements talk about --

15:35:08 7 THE COURT: You're asking him a question that has a lot
15:35:14 8 of places.

15:35:14 9 MR. WOMACK: And that's a good reason not to because of
15:35:16 10 that.

15:35:17 11 THE COURT: He's got to have intent to -- doesn't even
15:35:20 12 have to have any knowledge --

15:35:21 13 MR. WOMACK: You'll give instructions on that. Yes,
15:35:23 14 sir. I know that. I'll withdraw that.

15:35:24 15 MR. MAYR: Judge, what was that last part? He doesn't
15:35:26 16 have to have acknowledge?

15:35:27 17 THE COURT: He doesn't have to know -- actually, it's
15:35:31 18 he has to have knowledge that he was trying to avoid the
15:35:36 19 reporting.

15:35:36 20 MR. MAYR: But he does have to know that there is a
15:35:38 21 reporting requirement.

15:35:38 22 MR. WOMACK: Assume he had to know to avoid it.

15:35:41 23 MR. MAYR: Yeah, he does.

15:35:42 24 THE COURT: Not in a particular bank. You wouldn't
15:35:44 25 have to know that. He just knows that he's supposed to report

15:35:49 1 it -- the bank's supposed to report it.

15:35:51 2 MR. WOMACK: Two things. First, you have to know
15:35:52 3 there's a requirement for the bank to do it and you have to
15:35:54 4 intend to avoid that by breaking it down into small deposits.
15:35:58 5 But I understand he's not a proper witness. I would -- I
15:36:01 6 understand, sir. Thank you.

15:36:09 7 Q. (BY MR. WOMACK) In the Marine Corps, we have a saying, as
15:36:13 8 you were. That means to forget everything else and go back to
15:36:15 9 square one, okay? As you were.

15:36:17 10 A. Okay.

15:36:23 11 Q. You were shown a signature card for Bonanza Racing Stables?

15:36:31 12 A. Yes.

15:36:58 13 Q. You were shown the bank account signature card or signature
15:37:05 14 records for Bonanza Racing Stables. Remember that?

15:37:09 15 A. Yes.

15:37:10 16 Q. And it has that real distinctive signature of Francisco
15:37:16 17 Silva-Ramos on the signature card, correct?

15:37:18 18 A. Correct.

15:37:19 19 Q. When someone opens a bank account, personal or commercial.
15:37:31 20 In addition to the guy that owns the company or owns the account,
15:37:35 21 he or she can designate other people to be signatories on that
15:37:39 22 account?

15:37:40 23 A. Correct.

15:37:41 24 Q. So when Mr. Silva-Ramos opened the bank account for Bonanza
15:37:50 25 Stables, he could have, if he wanted to, added any of his

15:37:56 1 employees or anyone associated with his company, he could have
15:38:01 2 added them on the account as signatories if he had wanted to,
15:38:05 3 correct?

15:38:05 4 A. Yes.

15:38:06 5 Q. And if he doesn't do that, then they're not authorized to
15:38:12 6 draw money on his account, are they?

15:38:13 7 A. Correct.

15:38:15 8 Q. And I think you told us when Bonanza Racing Stables opened
15:38:20 9 their account on the account that we have here in evidence, they
15:38:26 10 started with a balance of \$100,000?

15:38:28 11 A. Right.

15:38:30 12 Q. And you know that they never drew anything on that account,
15:38:35 13 did they?

15:38:35 14 A. Right, because the check that was written bounced.

15:38:40 15 Q. Oh, there's a check that was written that bounced?

15:38:43 16 A. Right.

15:38:43 17 Q. And who was that to, do you know?

15:38:46 18 A. The check was written to Tremor Enterprises. Well, from
15:38:51 19 Tremor Enterprises to Bonanza Racing Stables.

15:38:53 20 Q. And was it for more than \$100,000?

15:38:54 21 A. No. It was 100,000 for the purchase of Mr. Ease Cartel.

15:39:00 22 Q. Okay. So no one, not even Mr. Silva-Ramos, no one
15:39:08 23 successfully drew money on that account, did they?

15:39:11 24 A. According to -- no. Not with that check. No.

15:39:18 25 Q. That's all the questions I have.

15:39:27 1

CROSS-EXAMINATION

15:39:27 2 BY MR. ESPER:

15:39:33 3 Q. Mr. Williams, how long have you been with the IRS, sir?

15:39:37 4 A. Twenty-one years.

15:39:40 5 Q. And you are a Certified Public Accountant?

15:39:42 6 A. No. I'm not.

15:39:43 7 Q. Just an accountant. You have a degree in accounting?

15:39:46 8 A. No. It's a business administration and I have minor in

15:39:49 9 accounting.

15:39:49 10 Q. Are you attached to the CID division or are you just an IRS

15:39:54 11 agent?

15:39:54 12 A. No. I'm a special agent in CID department.

15:39:58 13 Q. Okay. Let's just assume a hypothetical I want to pose to

15:40:05 14 you. Then I'll ask you some questions, okay?

15:40:07 15 A. Okay.

15:40:07 16 Q. Let's assume that you're not an IRS agent. You're a

15:40:11 17 reputable horse person.

15:40:13 18 A. Well, I can't assume I'm not one and I'm not a reputable

15:40:17 19 horse person.

15:40:18 20 Q. Pardon?

15:40:18 21 A. I can't assume I'm not an IRS agent or a reputable horse

15:40:23 22 person. I'm not either one.

15:40:24 23 Q. Let's just for purposes of this hypothetical. Let's just

15:40:27 24 assume you are a reputable horse buyer, person who evaluates

15:40:32 25 horses?

15:40:32 1 A. Okay. I'll try.

15:40:34 2 Q. I'm not a lawyer, but I'm a reputable horse trainer.

15:40:38 3 A. Okay.

15:40:39 4 Q. You now come to me and you say, Mr. Esper, I represent some

15:40:44 5 people who own some horses. They want them trained so that they

15:40:50 6 can enter them in racing events, and they'd like -- and my

15:40:57 7 recommendation to my clients is they bring them to you, meaning

15:41:02 8 me, and I say, okay. And you ask me, how much are your fees, I

15:41:07 9 tell you. Minimum of thousand dollars plus certain things are

15:41:12 10 extra, and you then, say, okay, here's my contact information.

15:41:18 11 The bills will -- you send the bills to me and I'll make sure you

15:41:23 12 get paid, okay?

15:41:24 13 A. Uh-huh.

15:41:25 14 Q. With me? Okay. Now, all of a sudden, here comes about 40

15:41:30 15 horses that are now on my little modest racing facility. That's

15:41:33 16 a minimum of about 40,000 a month, correct?

15:41:37 17 A. Yeah.

15:41:38 18 Q. Okay. Now, I start having my office girl bill you for that

15:41:46 19 \$40,000 every month. And based on your representations to me,

15:41:53 20 you're going to collect that 40,000 and pay me for my services.

15:41:57 21 Fair enough?

15:41:57 22 A. Okay. Are you saying I'm going -- who's going to collect

15:42:00 23 it?

15:42:01 24 Q. You are. You represented that you're the representative of

15:42:04 25 some people that own horses.

15:42:05 1 A. So why wouldn't they just go directly to the person that
15:42:08 2 they're paying?

15:42:09 3 Q. Well, because you're their agent, sir.

15:42:10 4 A. But they could send that person the check. Why would they
15:42:13 5 go through me to get to you?

15:42:15 6 Q. I'm not trying to be argumentative.

15:42:16 7 A. Well, I know, but you said I'm being a reputable person and
15:42:20 8 you're asking me my opinion, and I'm saying I would have the
15:42:23 9 person go directly to that person, instead of doing a triangle.

15:42:26 10 Q. Let's say the owners live in Mexico and they don't want to
15:42:30 11 come over to the United States, for whatever reason.

15:42:33 12 A. You mail a check.

15:42:33 13 Q. They know you travel back and forth.

15:42:35 14 A. Mail a check.

15:42:36 15 Q. Pardon me?

15:42:37 16 A. I would mail a check or wire to them directly.

15:42:39 17 Q. Okay. So whenever the bill is sent to you, you would tell
15:42:43 18 them, hey, just wire it into.

15:42:46 19 A. My account.

15:42:46 20 Q. Wire it into your account and then, you would make sure I
15:42:49 21 would get paid?

15:42:49 22 A. No. I mean, I would have them wire to you, not to me.

15:42:52 23 Q. That's what you'd have them do. Wire it to Mr. Esper,
15:42:56 24 either wire it into his account or wire the money to him
15:42:59 25 directly?

15:43:00 1 A. Yeah. Not to me.

15:43:02 2 Q. I understand. I understand. But I'm looking to you. I'm

15:43:07 3 looking to you. You're telling me you look to me for payment of

15:43:10 4 the bills. So I'm looking to you for payment of the bills. Now,

15:43:14 5 you say you're going to tell the owners, hey, don't give me the

15:43:18 6 money, give it to him directly. That's what you're saying?

15:43:22 7 A. Yeah. Why include a third person? Go directly to the

15:43:25 8 person that's --

15:43:27 9 Q. I understand.

15:43:28 10 A. -- billing each other.

15:43:29 11 Q. Now, do I have any control how those owners pay me?

15:43:39 12 A. Do you have any control?

15:43:41 13 Q. Yes.

15:43:41 14 A. If you request to be paid by check and not cash, yes, you

15:43:44 15 do.

15:43:44 16 Q. Well, let's just say, here's my bank account. Please either

15:43:48 17 wire-transfer me the money into my account. I make that

15:43:52 18 request --

15:43:53 19 A. But when you do that --

15:43:54 20 Q. I make that request.

15:43:55 21 A. But you have to really trust that person and know them real

15:43:58 22 well to give them your banking information.

15:43:59 23 Q. Well, but you're the one that has approached me, Mr.

15:44:02 24 Williams, in the hypothetical.

15:44:03 25 A. Okay, well, I got lost in this hypothetical.

15:44:06 1 THE COURT: We're not getting anywhere. Plus the fact
15:44:10 2 you've got the horses.

15:44:11 3 MR. ESPER: Yes, sir.

15:44:12 4 THE COURT: So let's go on to something germane.

15:44:15 5 Q. (BY MR. ESPER) Okay. If I'm being paid and I tell the
15:44:17 6 owners, this is how I want to be paid, pay it into my bank
15:44:22 7 account, if it's paid differently, if it's paid differently, am I
15:44:28 8 responsible for how it's paid differently than what I requested?

15:44:30 9 A. If you have knowledge of how it's getting there, you do.

15:44:32 10 Q. If I have knowledge, absolutely.

15:44:33 11 A. But you know when you get your statement how it's getting
15:44:36 12 paid.

15:44:36 13 Q. If I know when I get my statement, I see how I'm being paid.

15:44:40 14 Correct.

15:44:42 15 A. Exactly.

15:44:42 16 Q. But if I don't know how I'm being paid --

15:44:43 17 A. But you see it.

15:44:45 18 Q. Wait a minute, sir. If it's contrary to what I requested,
15:44:49 19 I'm not accountable unless I knew they were trying to violate the
15:44:52 20 law, correct?

15:44:53 21 A. Right. But if you continue --

15:44:55 22 Q. That's all I have.

15:44:57 23 MR. GARDNER: Your Honor, I think he could answer the
15:45:00 24 last question posed.

15:45:02 25 THE COURT: We've had enough of that.

15:45:06 1 MR. MAYR: Your Honor, if I may have a moment, I need
15:45:08 2 to set up my laptop because I'm going to ask him questions based
15:45:11 3 on this.

15:45:12 4 MS. WILLIAMS: During that moment, your Honor, I
15:45:14 5 intended to offer my notes as JT-8 for demonstrative purposes
15:45:22 6 only.

15:45:22 7 MR. GARDNER: No objection, your Honor.

15:45:23 8 THE COURT: JT-8 is received.

15:46:04 9 MR. GARDNER: May we approach, your Honor?

15:46:12 10 (At the bench, on the record.)

15:46:25 11 THE COURT: I can tell that these meetings here at the
15:46:28 12 pitching mound have to stop.

15:46:31 13 MR. MAYR: I tried to work out an agreement with him.
15:46:35 14 What Mr. Womack did was a little bit confusing to the jury. I've
15:46:37 15 actually prepared a PowerPoint with the elements from a court of
15:46:43 16 appeals decision setting forth the elements for structuring. I
15:46:46 17 want to --

15:46:46 18 THE COURT: I will instruct them on the elements. Not
15:46:49 19 you.

15:46:50 20 MR. MAYR: Okay. Fair enough.

15:46:51 21 THE COURT: End of question.

15:46:52 22 MR. MAYR: Fair enough. Okay.

15:47:03 23 CROSS-EXAMINATION

15:47:03 24 BY MR. MAYR:

15:47:08 25 Q. Agent Williams.

15:47:09 1 A. Yes.

15:47:10 2 Q. Classic example of structuring. You give me \$20,000. I

15:47:15 3 don't want the IRS to know about it, so I take 5,000 of it and I

15:47:20 4 deposit it into one account. Take another 7,500, deposit it into

15:47:25 5 another bank account. And I take the last 7,500 and I deposit it

15:47:28 6 into another bank account at a completely different bank. That's

15:47:31 7 pretty classic example of structuring, right?

15:47:34 8 A. Yes.

15:47:34 9 Q. Because it shows that I'm intending to avoid the reporting

15:47:38 10 requirement in filling out those CTRs or Cash Transaction Reports

15:47:41 11 that you were talking about with Mr. Gardner, correct?

15:47:43 12 A. Yes.

15:47:44 13 Q. Okay. So the key there is that I don't want to fill those

15:47:49 14 forms out because I don't want the IRS to know, right?

15:47:52 15 A. Right.

15:47:53 16 Q. Okay. Showing you what's been admitted as 352B. Can you

15:48:10 17 see that okay up there? I'm going to zoom in.

15:48:12 18 A. Yeah.

15:48:15 19 Q. Okay. What you previously testified to is that this is a

15:48:19 20 certified record of all cash transaction reports that were filed

15:48:25 21 in relation to my client Jesus Huitron's account; is that right?

15:48:29 22 A. Yes.

15:48:29 23 Q. Okay. This is it. This is accurate. There is no

15:48:35 24 discrepancies here whatsoever, right?

15:48:37 25 A. I'm basing it on the certification of FinCEN.

15:48:41 1 Q. That one right there, right?

15:48:43 2 A. Yes.

15:48:43 3 Q. Okay. Now, for the jury's sake, I'm not going to go through

15:48:48 4 each one of these transactions here, but if I understand this

15:48:52 5 correctly, what this means is that, for instance, on -- so, for

15:49:03 6 instance, right here, on July 12, 2010, that means there was a

15:49:16 7 total cash and deposit of \$14,150 that was deposited by Jesus

15:49:30 8 Huitron, right?

15:49:30 9 A. Correct.

15:49:31 10 Q. Okay. Now, this deposit shows to be filed in Laredo; is

15:49:36 11 that right?

15:49:36 12 A. Correct.

15:49:37 13 Q. So does that mean that my client would have had to go down

15:49:39 14 to Laredo and make the deposit down there?

15:49:42 15 A. Based on this form, yes.

15:49:45 16 Q. Okay. Did you make any attempts to obtain the actual CTRs

15:49:51 17 from these banks?

15:49:52 18 A. The actual CTRs? Yes. We had a backup to this. Yes.

15:50:01 19 Q. I may ask you about those later.

15:50:03 20 A. Okay.

15:50:03 21 Q. Let's focus on -- I want to just focus, rather than going

15:50:07 22 through each one of these, the three overt acts that are alleged

15:50:10 23 in the indictment, okay? I'm going to start first with the

15:50:13 24 transaction from May 20th of 2011, okay?

15:50:18 25 May 20th, 2011. We've got it right there, correct?

15:50:42 1 May 20th, 2011.

15:50:43 2 A. Right.

15:50:44 3 Q. We see total cash in, \$19,800.

15:50:49 4 A. Correct.

15:50:49 5 Q. And if we go all the way across, we see that Victor Lopez

15:50:57 6 made a deposit to Jesus Huitron's account; is that right?

15:51:01 7 A. Correct.

15:51:01 8 Q. Okay. In Laredo, right?

15:51:08 9 A. Correct.

15:52:08 10 MR. GARDNER: Mr. Mayr, we have no objection to

15:52:10 11 introducing any of the underlying CTRs. We have no objection to

15:52:14 12 introducing to the jury any of the underlying CTRs that form the

15:52:17 13 basis of the FinCEN report.

15:52:22 14 MR. MAYR: I need an opportunity to review these first

15:52:24 15 before I get to this point. Let me just hold off on these for

15:52:27 16 now and just focus on this. Let me come back over here since

15:52:29 17 I've got them over here, Agent Williams.

15:52:36 18 Q. (BY MR. MAYR) Okay. So we're talking about 5-20-11 and we

15:52:42 19 see on my client's bank statements here, those are the two

15:52:49 20 deposits right there; is that right? See them right there?

15:52:55 21 A. Yes.

15:52:55 22 Q. If you go through the bank statements, you see that there's

15:52:59 23 -- there's lots of transactions consistent with a home building

15:53:03 24 and painting business, right?

15:53:05 25 A. Which transaction are you talking about? The deposits or?

15:53:09 1 Q. Yeah. The deposits.

15:53:09 2 A. I can't tell from those deposits where they're home

15:53:15 3 builders.

15:53:15 4 Q. Well, the banks statements have deposit slips. So let me

15:53:19 5 show you this. This is page 2398 of -- this is Bates stamp

15:53:27 6 41-002398. That appears to be a deposit slip, correct?

15:53:30 7 A. Correct.

15:53:30 8 Q. Okay. And do you recognize the writing on that deposit

15:53:34 9 slip?

15:53:40 10 A. It possibly could be Jessica's.

15:53:43 11 Q. It is Jessica's, right? Let me see -- let me see 55B,

15:53:58 12 please. There it is. We got it. Good.

15:54:54 13 Okay. You see I'm showing you 55B, which was

15:54:58 14 previously admitted into evidence. You see the handwriting there

15:55:00 15 with the name Jessica Huitron, right?

15:55:03 16 A. Uh-huh.

15:55:04 17 Q. Could I have the next page, please? And you see this

15:55:08 18 handwriting of these names next to these horses. That appears to

15:55:11 19 be the same handwriting, correct?

15:55:12 20 A. Correct.

15:55:14 21 Q. And with the IRS working in conjunction with the FBI, you

15:55:17 22 have access to handwriting experts who can compare and contrast

15:55:21 23 to determine if it's someone else, right?

15:55:23 24 A. Yeah. Yes.

15:55:25 25 Q. Now, let's go back to these deposit slips. Again, that

15:55:34 1 appears to be the similar handwriting of Jessica Huitron?

15:55:38 2 A. Correct.

15:55:39 3 Q. And you know from your investigation that she is -- I think

15:55:44 4 Mr. Esper called it the -- I forgot what it was. She basically

15:55:48 5 runs the office, right?

15:55:49 6 A. Right.

15:55:50 7 Q. Okay. So she's filling out the deposit slip. Let's keep

15:55:54 8 going through. I'm going to the next page, 2399. Now, 2400 is a

15:56:00 9 check from Fernando Garcia, right?

15:56:02 10 A. Correct.

15:56:03 11 Q. Now, I'm not concerned so much about the check, but look at

15:56:06 12 the endorsement on the back. Do you see that there?

15:56:08 13 A. Correct.

15:56:09 14 Q. Jessica Huitron's handwriting, right?

15:56:10 15 A. Correct.

15:56:11 16 Q. Consistent with the fact that she's the one who is making

15:56:15 17 out the deposits and preparing them; is that right?

15:56:17 18 A. Right.

15:56:17 19 Q. Okay. Let's keep jumping ahead. Okay. There's a deposit

15:56:31 20 slip that was shown on the bank statement, right?

15:56:35 21 A. Correct.

15:56:36 22 Q. And it's shown here.

15:56:38 23 A. Uh-huh.

15:56:39 24 Q. And then, here's the second deposit right here. Right?

15:56:43 25 A. Correct.

15:56:43 1 Q. Okay. Now, in this particular case, it's Victor Lopez who's
15:56:48 2 going and making the deposit, right?
15:56:50 3 A. It depends on which deposit you're talking about.
15:56:54 4 Q. Well, I'm still --
15:56:56 5 A. You're still on 520?
15:56:58 6 Q. I'm still on 520. That's Victor Lopez, right?
15:57:01 7 A. Right.
15:57:01 8 Q. So Victor Lopez goes down to Laredo and makes this deposit,
15:57:08 9 possibly my client doesn't know that he's making that deposit,
15:57:10 10 right?
15:57:13 11 A. In order for him to get his bank account information, Jesus
15:57:17 12 had to give it to him.
15:57:17 13 Q. Sure. And there's nothing wrong with giving someone my bank
15:57:22 14 account information to make a deposit into my account. Right?
15:57:25 15 A. Right. But his relationship with Victor Lopez, what is
15:57:30 16 Victor Lopez?
15:57:31 17 Q. That's not my --
15:57:32 18 A. Okay. I'm just --
15:57:32 19 Q. Okay. Victor Lopez reports it, so he does what he's
15:57:38 20 supposed to do, right?
15:57:39 21 A. Correct.
15:57:41 22 Q. There was a Cash Transaction Report notifying that this was
15:57:45 23 actually taking place?
15:57:46 24 A. Correct.
15:57:46 25 Q. Now, the next one I want to go to is the next one in the

15:57:56 1 indictment, July 6th. Okay. July 6, 2011. Do you see that
15:58:19 2 there?
15:58:20 3 A. Yes.
15:58:20 4 Q. Deposit for \$19,800?
15:58:24 5 A. Correct.
15:58:25 6 Q. Made by my client Jesus Huitron?
15:58:28 7 A. Correct.
15:58:56 8 Q. Okay. Here's his July bank statement, right, that we're
15:58:59 9 looking at here?
15:59:01 10 A. Not on the 6th.
15:59:05 11 Q. We're on -- no. That's right. We're not there. But there
15:59:07 12 is his July of 2011 bank statement?
15:59:12 13 A. Correct.
15:59:12 14 Q. In the account here in question.
15:59:15 15 A. Right.
15:59:16 16 Q. For the record, I'm actually going to go to Bates page
15:59:21 17 41-0002487. Actually, go back. I'm looking at page 2484.
15:59:54 18 They're right there, 7-6, the two deposits, right?
15:59:58 19 A. Correct.
15:59:59 20 Q. Okay. Now, just going through some of these other checks
16:00:12 21 that are being deposited in the account, we see this one here is
16:00:16 22 from an Albert Vera to Eusevio Huitron for? Can you read what
16:00:25 23 says in the memo line here? This is page 2495.
16:00:25 24 A. Yeah, training and winning and travel.
16:00:29 25 Q. Okay. Albert Vera, he's not part of this alleged

16:00:33 1 conspiracy, is he?

16:00:34 2 A. No.

16:00:35 3 Q. Okay. And can you read what it says there in the middle of

16:00:44 4 the line?

16:00:48 5 A. The top part, expenses, All American races, executive.

16:00:54 6 There's a dash on the right, I can't read that. Is that

16:00:57 7 Executive Precision?

16:00:58 8 Q. But it seems to be related to horse racing, right?

16:01:02 9 A. Right.

16:01:03 10 Q. Now, we see a check from an Alejandra Lopez, D/B/A, AL

16:01:14 11 Welding, right?

16:01:15 12 A. Correct.

16:01:15 13 Q. They're not doing anything wrong, are they?

16:01:17 14 A. No.

16:01:18 15 Q. Okay. Now, do you know -- actually, I remember this one.

16:01:46 16 Do you remember whether the actual deposit slips were shown on

16:01:48 17 this bank statement for this account?

16:01:50 18 A. To.

16:01:51 19 Q. This one that we're talking about, the alleged act in the

16:01:54 20 indictment, these deposits that were made on July 7, 2011, do you

16:02:00 21 know if they were deposit slips similar to -- or cancelled checks

16:02:04 22 similar to this?

16:02:05 23 A. When you're talking about are they available?

16:02:07 24 Q. Right. In other words, yes. That's what I'm asking.

16:02:09 25 A. Well, they should be within this exhibit here with the bank

16:02:14 1 statements.

16:02:14 2 Q. Right. But they're not for this particular transaction,

16:02:17 3 though.

16:02:18 4 A. No. Well, I can't tell you if they actually were then.

16:02:22 5 Q. You went through all these bank statements, right?

16:02:24 6 A. Yeah. Majority of them. What I'm saying is I went through

16:02:27 7 these, but these transactions is based on the CTR that was filed

16:02:32 8 with the bank.

16:02:33 9 Q. Well, let's just talk about that then. So maybe there's no

16:02:36 10 deposit slip here, but my client's bank statement shows the

16:02:39 11 deposits being made?

16:02:39 12 A. Correct.

16:02:40 13 Q. And this document right here shows that he filed the Cash

16:02:52 14 Transaction Report, right?

16:02:54 15 A. Not that he did. The bank did.

16:02:56 16 Q. But he had to fill it out, right?

16:02:58 17 A. The bank would fill it out.

16:03:00 18 Q. And then, he -- he would present identification, right?

16:03:04 19 A. Correct.

16:03:04 20 Q. Okay. So a Cash Transaction Report was filled out.

16:03:10 21 A. Right.

16:03:13 22 Q. Let me go to the last transaction and we'll move on.

16:03:26 23 December 12, 2011. Right there.

16:03:35 24 A. Correct.

16:03:36 25 Q. At the top. December 12, 2011. The indictment says that

16:03:44 1 this transaction is part of this conspiracy, but a Cash
16:03:49 2 Transaction Report is being submitted, right?
16:03:51 3 A. Right.
16:03:55 4 Q. You said you did a financial analysis of my client's
16:03:59 5 business; is that right?
16:04:00 6 A. The bank statement, I did the currency transactions only.
16:04:02 7 Q. So you didn't do a full financial analysis of my client's
16:04:08 8 business; is that right?
16:04:08 9 A. No.
16:04:11 10 Q. So were you aware that they kept their books using
16:04:18 11 QuickBooks software and other software on their computers?
16:04:21 12 A. No.
16:04:22 13 Q. Okay. Fair enough. I can ask someone else about that.
16:05:01 14 I'm showing you Government's Exhibit 60. I'm going to
16:05:05 15 start with 60D. This handwriting with all these numbers, that's
16:05:15 16 Jessica Huitron's handwriting, to the best of your knowledge?
16:05:20 17 A. Yeah. To the best of my knowledge, yes.
16:05:22 18 Q. All right. Over here, to the best of your knowledge, right?
16:05:26 19 A. Right.
16:05:34 20 Q. Then, again, this is also her handwriting over here. Let's
16:05:37 21 just come back to this one right here. When this document, was
16:05:42 22 it found like hidden in some safe or buried under the house? Do
16:05:46 23 you know where exactly in the house it was found?
16:05:48 24 A. No. It was in the office.
16:05:49 25 Q. Okay. It was in an office, right?

16:05:51 1 A. Right.

16:05:51 2 Q. So it wasn't concealed, or hidden, or anything else like

16:05:54 3 that?

16:05:54 4 A. No.

16:05:54 5 Q. All right. So you could go into this business and you can

16:05:59 6 get documents that show that they are keeping track of these

16:06:02 7 things, right?

16:06:03 8 A. Right.

16:06:03 9 Q. You can go into their computers and look to see whether

16:06:07 10 these transactions are being recorded, right?

16:06:12 11 A. Their computers were there, yes.

16:06:13 12 Q. Okay. And you could go down to bank and you could get the

16:06:16 13 bank records that show that the deposits are being made.

16:06:19 14 A. Right.

16:06:20 15 Q. And if you -- you can contact the bank and see whether

16:06:24 16 there's a Cash Transaction Report that was filled out and

16:06:28 17 submitted at that time, right?

16:06:28 18 A. Right.

16:06:29 19 Q. Is that consistent with someone trying to hide something?

16:06:45 20 A. Or not trying to hide, but if you look at your deposits that

16:06:47 21 you were showing me, there were 9,900, 9,900, they were

16:06:52 22 structuring.

16:06:52 23 Q. Is it consistent with someone trying -- I'm not asking you

16:06:56 24 to explain. Is it consistent with hiding or not, all those

16:06:58 25 things I just spelled out for you? Documents in the open,

16:07:02 1 recordings on computer, bank statements, and Cash Transaction
16:07:06 2 Reports that were filled out. It would be another thing if there
16:07:09 3 were no Cash Transaction Reports filled out, right, Agent
16:07:12 4 Williams?

16:07:13 5 A. Well, the bank -- they wouldn't fill them out. It's up to
16:07:17 6 the bank to fill them out.

16:07:18 7 Q. All of these things, though, to you, that's consistent with
16:07:22 8 hiding or intent to evade the reporting requirements?

16:07:27 9 A. When you're structuring \$9,900, that is.

16:07:33 10 Q. But there's documentation --

16:07:35 11 A. Or if you do it on the same day --

16:07:36 12 Q. It's not my question. But there's documentation to support,
16:07:41 13 right?

16:07:41 14 A. That a CTR was found -- filed?

16:07:44 15 Q. Yes.

16:07:45 16 A. Yes.

16:07:45 17 Q. I have no further questions, your Honor.

16:07:49 18 THE COURT: Any further questions?

16:07:51 19 MR. GARDNER: Just a few, your Honor.

16:07:53 20 RE-DIRECT EXAMINATION

16:07:53 21 BY MR. GARDNER:

16:07:56 22 Q. Who files the CTR and the Cash Transaction Report? The bank
16:08:00 23 or the individual?

16:08:00 24 A. The bank does.

16:08:01 25 Q. Who fills out the Cash Transaction Report, the bank or the

16:08:05 1 individual?

16:08:05 2 A. The bank does.

16:08:06 3 Q. If I were to make a deposit of \$8,000 in the morning, would

16:08:10 4 the bank necessarily fill out a Cash Transaction Report?

16:08:13 5 A. No. Not that day.

16:08:14 6 Q. If I were to make another deposit the same day of \$9,900,

16:08:18 7 would the bank necessarily fill out a transaction report?

16:08:21 8 A. Yeah, they would file it. Because once the transaction

16:08:24 9 reached over 10,000, they would file that CTR.

16:08:27 10 Q. What does the customer provide in terms of the bank filling

16:08:30 11 out that form?

16:08:31 12 A. Identification.

16:08:33 13 Q. So is it possible that the customer doesn't -- or is not

16:08:40 14 aware of the bank filling out the CTR?

16:08:42 15 A. That is correct.

16:08:42 16 Q. How old is Jessica Huitron?

16:08:44 17 A. Twenty-nine.

16:08:45 18 Q. How old is Eusevio Huitron?

16:08:48 19 A. I want to say he's 60, maybe.

16:08:53 20 Q. And Jesus Huitron?

16:08:56 21 A. In his 60s.

16:08:58 22 Q. Showing you Exhibit 51A. This is by stipulation taken from

16:09:03 23 Huitron Homes, Huitron Painting business on Highway 183 in

16:09:09 24 Austin, Texas. And just for the record, could you read across

16:09:13 25 the line and, specifically, the date?

16:09:15 1 A. Eusevio Huitron, June 26, 2008 and President as the title.

16:09:21 2 Q. President of?

16:09:22 3 A. Huitron Painting.

16:09:24 4 Q. Showing you Government's Exhibit 51B, also by stipulation,

16:09:28 5 taken from the Huitron Homes, Huitron Painting business. What's

16:09:35 6 the date on this, sir?

16:09:36 7 A. December 28, 2010.

16:09:39 8 Q. And what's it state down here?

16:09:41 9 A. Jesse Huitron, President.

16:09:44 10 Q. Did you see any transfer or corporate documents that would

16:09:48 11 indicate that Eusevio Huitron transferred the presidency of

16:09:52 12 Huitron Painting to Jesse Huitron?

16:09:54 13 A. No.

16:09:57 14 Q. If you could, starting here, could you please read this?

16:10:02 15 A. If you have any further questions, please feel free to

16:10:05 16 contact me at --

16:10:08 17 Q. I'm sorry. Let's go up above. Eusevio?

16:10:11 18 A. Okay. Since the economy has slowed down, Eusevio was

16:10:15 19 working currently whenever he is needed. He earns \$350 weekly

16:10:19 20 and is paid cash. If you have any further questions, please feel

16:10:22 21 free to contact me at the number listed above.

16:10:25 22 Q. Is Jesse Huitron the same thing as Jesus?

16:10:28 23 A. No. Oh, Jesus, yes.

16:10:31 24 Q. Now, this date, remind the jury, again, the amount of cash

16:10:35 25 flowing into the Huitron Homes or Huitron Painting account.

16:10:38 1 A. During that time, first of all, it was approximately that
16:10:44 2 \$505,000 going in during that period.

16:10:46 3 Q. And that's in cash, correct?

16:10:47 4 A. That's in cash.

16:10:48 5 Q. Now, when Mr. Mayr showed you -- and let me combine two
16:10:54 6 things. When Mr. Mayr and Mr. Esper talked about being a
16:10:57 7 reputable individual, do you remember those questions by Mr.
16:11:00 8 Esper?

16:11:00 9 A. Yes.

16:11:01 10 Q. Okay. Those checks that Mr. Mayr showed you, do they appear
16:11:04 11 to be from legitimate businesses?

16:11:08 12 A. The ones from which?

16:11:11 13 Q. The ones Mr. Mayr showed you on his computer, the various
16:11:14 14 checks to Huitron Painting -- or, I'm sorry, to Eusevio Huitron
16:11:19 15 for horse training?

16:11:20 16 A. Oh, yes. Yes.

16:11:21 17 Q. The personal checks?

16:11:22 18 A. Yes.

16:11:23 19 Q. Does that appear consistent with legitimate businesses?

16:11:26 20 A. Yes.

16:11:26 21 Q. The \$500,000 in structured cash if you were legitimate?

16:11:30 22 A. No.

16:11:31 23 MR. ESPER: I'm going to object, your Honor, to the
16:11:33 24 question. It's improper.

16:11:35 25 MR. GARDNER: I believe it's proper cross-examination,

16:11:37 1 your Honor.

16:11:38 2 MR. ESPER: No. The form of the question, your Honor,

16:11:40 3 I object.

16:11:41 4 MR. GARDNER: I could rephrase, your Honor.

16:11:42 5 THE COURT: Well, he's already answered.

16:11:43 6 MR. GARDNER: Yes, sir.

16:11:44 7 THE COURT: Let's go on.

16:11:46 8 MR. GARDNER: I don't have any further questions.

16:11:48 9 THE COURT: Any --

16:11:49 10 MS. WILLIAMS: No, your Honor.

16:11:52 11 MR. WOMACK: No, your Honor.

16:11:53 12 MR. SANCHEZ: No, your Honor.

16:11:56 13 RE-CROSS EXAMINATION

16:11:56 14 BY MR. ESPER:

16:11:57 15 Q. Mr. Williams, if I quote a fee to a client -- I've never

16:12:00 16 done this, but if I quote a fee of \$500,000 to represent somebody

16:12:03 17 in a case, the client can either pay me with a check, correct?

16:12:08 18 A. Uh-huh.

16:12:09 19 Q. Assuming they have it?

16:12:10 20 A. Right.

16:12:11 21 Q. They could pay me with a cashier's check, correct?

16:12:14 22 A. Correct.

16:12:14 23 Q. They could have the money wire-transferred into my account?

16:12:17 24 A. Correct.

16:12:19 25 Q. Or if they ask me, can I have your account, I'll have the

16:12:24 1 money deposited into your account. That's one of the four ways I
16:12:26 2 could be paid, correct?

16:12:27 3 A. Right.

16:12:28 4 Q. Okay. Now, if they bring me the \$500,000 cash, of course I
16:12:34 5 have an obligation to report that as income, correct?

16:12:37 6 A. Correct.

16:12:37 7 Q. Or otherwise, I would get in trouble?

16:12:38 8 A. Right.

16:12:39 9 Q. I would get in trouble if I then took that \$500,000 and
16:12:43 10 started making deposits into my account over about a ten-day
16:12:47 11 period of \$9,000, \$9,000 at different branches?

16:12:50 12 A. Right.

16:12:50 13 Q. That clearly is structuring, correct?

16:12:53 14 A. Right.

16:12:55 15 Q. Now, if the client who's paying me does that without my
16:12:58 16 knowledge and the client is committing the structuring, correct?

16:13:04 17 A. Right. But if you keep getting a series of those.

16:13:07 18 Q. I understand.

16:13:08 19 A. You have -- if you review your bank statements and you get
16:13:11 20 9,900 this day, 99, 99, and continue on, you have knowledge that
16:13:16 21 you're getting structured --

16:13:17 22 Q. If I get my bank statement at the end of the month and
16:13:19 23 that's when I see this, that's when I should notify that person,
16:13:24 24 hey, you can't be doing this?

16:13:25 25 A. But in this case, most of the time --

16:13:27 1 Q. I'm asking you, sir, what I just told you, if I get at the
16:13:31 2 end of the month and I see these deposits, that's when I become
16:13:34 3 aware that you shouldn't be doing this?

16:13:37 4 A. Right.

16:13:37 5 Q. Okay. That's all I have.

16:13:42 6 MR. MAYR: Briefly, your Honor.

16:13:43 7 RE-CROSS EXAMINATION

16:13:43 8 BY MR. MAYR:

16:13:44 9 Q. Agent Williams, Mr. Gardner asked you some questions about
16:13:46 10 -- or posed a hypothetical to you that if I were to go in a bank
16:13:50 11 and make an \$8,000 deposit tomorrow morning, there's nothing
16:13:54 12 illegal about that?

16:13:54 13 A. Right.

16:13:55 14 Q. Cash deposit, nothing illegal?

16:13:56 15 A. Right.

16:13:57 16 Q. I don't have to fill out any forms?

16:13:58 17 A. Right.

16:13:59 18 Q. Okay. But if I deposit that \$8,000, knowing that I'm going
16:14:05 19 to go back later in the day to deposit another \$7,000 for a total
16:14:09 20 of \$15,000 and I walk into the bank and the cashier says, Mr.
16:14:16 21 Mayr, you need to fill this form out, I take off running, that's
16:14:20 22 pretty indicative of my intent to avoid reporting it, right?

16:14:24 23 MR. GARDNER: Excuse me, your Honor, that's misleading.
16:14:27 24 The CTR's filled out by the bank. I believe there's plenty of
16:14:31 25 testimony --

16:14:31 1 A. Correct.

16:14:32 2 THE COURT: The jury's heard that frequently. Just go
16:14:40 3 ahead and act it out, or whatever you want to do. But let the
16:14:44 4 record reflect that the counsel ran halfway across the courtroom
16:14:50 5 clumsily.

16:14:52 6 MR. MAYR: Thank you, your Honor.

16:14:53 7 THE COURT: You're welcome.

16:14:54 8 Q. (BY MR. MAYR) They fill it out and say, we need to see some
16:15:00 9 ID and verify who you are. I book it out of there. That would
16:15:04 10 be indicative of my intent to not want to report it, right?

16:15:09 11 A. If you take off.

16:15:10 12 Q. Yeah. But each time these deposits are made, all the forms
16:15:16 13 and the identification and everything is being presented and
16:15:20 14 filled out, right?

16:15:21 15 A. Want me to explain something to you?

16:15:23 16 Q. That's not my --

16:15:25 17 A. Okay. Yes.

16:15:25 18 Q. Okay. It is "Yes"?

16:15:26 19 A. Uh-huh.

16:15:27 20 Q. No further questions.

16:15:29 21 RE-DIRECT EXAMINATION

16:15:29 22 BY MR. GARDNER:

16:15:31 23 Q. I'm sorry. Go ahead and explain that, Special Agent
16:15:32 24 Williams.

16:15:34 25 MR. MAYR: Objection. Form of the question calls for a

16:15:36 1 narrative.

16:15:36 2 Q. (BY MR. GARDNER) Would you please explain your reasoning

16:15:40 3 behind your answer to Mr. Mayr's last question?

16:15:45 4 A. Like when he was saying, if you go in and make those

16:15:49 5 deposits, the bank doesn't necessarily have to ask you if that's

16:15:54 6 your account. They would already have that information on file

16:15:57 7 and file it from the information they have.

16:16:00 8 Q. That's all I have, your Honor.

16:16:03 9 THE COURT: May this witness be excused?

16:16:05 10 MS. WILLIAMS: Yes, your Honor.

16:16:06 11 MR. MAYR: Sure, your Honor. No problem.

16:16:08 12 THE COURT: You may be excused.

16:16:11 13 All right. You may call your next witness.

16:16:14 14 MS. FERNALD: Charles Cox.

16:16:55 15 (Witness sworn.)

16:17:09 16 THE COURT: If you'll tell us your full name and spell

16:17:18 17 your last, please.

16:17:18 18 THE WITNESS: Yes, sir. My name is Charles Hampton

16:17:22 19 Cox, III, and that's C-O-X.

16:17:25 20 THE COURT: You may proceed.

16:17:26 21 CHARLES H. COX, called by the Government, duly sworn.

16:17:26 22 DIRECT EXAMINATION

16:17:26 23 BY MS. FERNALD:

16:17:27 24 Q. And could you introduce yourself to the jury? Tell them

16:17:29 25 where you live, what city you live in, and what you do for a

16:17:32 1 living.

16:17:32 2 A. Yes, ma'am. I am Special Agent Charles Cox of the FBI. I

16:17:37 3 am stationed in the San Antonio field office. I've been in San

16:17:41 4 Antonio for approximately in the past five years.

16:17:45 5 Q. And at the FBI office, can you tell them basically what your

16:17:49 6 duties are, what your responsibilities are?

16:17:51 7 A. Yes. I am a computer forensic expert. That is my duty, my

16:17:56 8 day-to-day job. I provide forensic examinations of computers

16:18:01 9 that are involved in investigations for our office in San

16:18:06 10 Antonio.

16:18:06 11 Q. A variety of different criminal activities, correct?

16:18:09 12 A. Yes, ma'am.

16:18:09 13 Q. Agent Cox, can you tell the ladies and gentlemen of the jury

16:18:13 14 a little bit about your educational background, your training and

16:18:17 15 your experience as it comes to the forensic study of computers?

16:18:23 16 A. Yes, ma'am. I have a Bachelor's of Economics from

16:18:27 17 Vanderbilt University. After that, I was in the military where I

16:18:29 18 started working on some computers for several years. After that,

16:18:33 19 I got into computer support and network administration before I

16:18:36 20 joined with the FBI in 1998. At that time, I started working

16:18:42 21 cybercrime investigations, in addition to counterterrorism and,

16:18:45 22 also, counterintelligence.

16:18:48 23 In 2001, I started with the computer analysis response

16:18:52 24 team, which is the FBI's forensic computer expert. I was

16:18:58 25 certified as a computer expert by the FBI in 2002, and I have

16:19:04 1 served in that capacity since then. I received over 500 hours of
16:19:08 2 forensic training, specializing in computers, cellphones, GPS
16:19:12 3 devices, recovering data from these devices, and providing them
16:19:17 4 to the case agents for these investigations.

16:19:21 5 My training has been from the FBI and also through
16:19:23 6 commercial entities. And we do yearly required trainings,
16:19:28 7 certification and proficiency testing to make sure we maintain
16:19:33 8 our standards yearly.

16:19:33 9 Q. Over the past 11 years, how many examinations have you
16:19:37 10 conducted of computers?

16:19:40 11 A. I have probably conducted exams of over almost a thousand
16:19:45 12 but definitely over 800 computers. Several hundred cellphones,
16:19:50 13 removal media, CDs, floppy discs. I don't see too many of those
16:19:56 14 anymore, but all of the different types of media that are
16:19:58 15 associated with computers and digital electronics devices.

16:20:01 16 Q. And have you ever --

16:20:02 17 THE COURT: Mr. Cox, you're kind of like a computer
16:20:06 18 from the standpoint that you talk very fast.

16:20:10 19 THE WITNESS: Yes, sir.

16:20:11 20 THE COURT: And you're wearing out my interpreter. If
16:20:14 21 you'll be a little slower, please.

16:20:16 22 THE WITNESS: Certainly. Yes, your Honor.

16:20:18 23 Q. (BY MS. FERNALD) Have you ever been called as an expert in
16:20:21 24 federal court on forensic in computers?

16:20:23 25 A. Yes, ma'am. I have testified in federal courts six times

16:20:27 1 before as a defendant -- or as a computer forensic expert.

16:20:32 2 Q. Can you tell the ladies and gentlemen of the jury exactly

16:20:36 3 what happens in a typical case when there's computer located?

16:20:41 4 Kind of walk us through the process of search warrant and what

16:20:43 5 you typically do.

16:20:44 6 A. Okay. Yes, ma'am.

16:20:46 7 When an investigator requests our support, generally

16:20:51 8 we'll assist, if necessary, on a search warrant, we will go out,

16:20:56 9 participate in a search warrant, help identify digital media that

16:21:00 10 we can collect as part of an investigation. We will create if

16:21:05 11 onsite and is required, we'll create a forensic image of the

16:21:10 12 computers there onsite; otherwise, we will seize them and take

16:21:13 13 them back and process them as other evidence.

16:21:17 14 As part of our then-forensic process, we always create

16:21:20 15 a forensic image of the computers and other media that we have

16:21:26 16 seized so that we never work on the original image. We don't

16:21:30 17 want to take a chance of actually working on the original. We

16:21:32 18 always work on a forensic image. We take images when we're

16:21:36 19 creating these images. We create a digital signature associated

16:21:42 20 with that data that is on the device so that later, at the end of

16:21:47 21 our examination, we can also go back and create that same digital

16:21:50 22 signature as long as it verifies we know we have not touched or

16:21:54 23 changed the data in any way and that the integrity is still the

16:21:57 24 same.

16:21:59 25 As part of our investigations, the main role for what

16:22:02 1 we do as a forensic examiner is we process the data that is
16:22:06 2 collected on these digital devices and provide it in a more human
16:22:12 3 readable format to the investigator so that when they're looking
16:22:15 4 at the evidence or at a computer's hard drive, they will see the
16:22:20 5 documents, the spreadsheets, the e-mails, the graphics. And so,
16:22:25 6 basically it is taking that digital data and providing it to them
16:22:29 7 in a more easily recognizable format.

16:22:32 8 Q. And also to the assistant United States attorney?

16:22:35 9 A. Yes, ma'am.

16:22:35 10 Q. We keep talking about a digital image or an image of. Is
16:22:40 11 that an exact copy? Or can you explain the bit-by-bit a little
16:22:44 12 bit to the jury?

16:22:46 13 A. Yes, ma'am.

16:22:47 14 What we're doing when we take a forensic image, we're
16:22:50 15 actually reading every single bit of data on a hard drive, or CD,
16:22:53 16 or other kind of media, and what it does, it's reading every one
16:23:00 17 and zero off that data and collecting the -- because a lot of
16:23:03 18 times, there are files that have been deleted or are recoverable
16:23:06 19 later. So we're not just making a copy, but we're actually
16:23:09 20 making what we term a forensic image.

16:23:11 21 So it is an exact bit-for-bit, every one, every zero
16:23:15 22 that is on the hard drive. We are collecting that onto another
16:23:19 23 -- onto our media as we collect that digital signature I was
16:23:22 24 talking about.

16:23:22 25 Q. In the case of a search warrant, you have the option, I

16:23:26 1 think you said, first of actually seizing the media or the
16:23:30 2 computer, or you can actually go ahead and make that image there.
16:23:35 3 Can you explain a little bit about that?
16:23:36 4 A. Yes, ma'am.
16:23:37 5 Depending on the scenario, if we go to a search site
16:23:41 6 where computers are too large to where we could not take them,
16:23:45 7 say, a large business, or something like that, or where
16:23:50 8 especially if the judge or magistrate has ordered that we cannot
16:23:53 9 shut a company down, we will make an image so that we have to --
16:23:56 10 because we have to leave the computer there. We take an image.
16:23:59 11 If it is -- because of the time required to copy and
16:24:03 12 make these images, we're talking nowadays, the hard drives and
16:24:07 13 the media are quite large. They can take seven or eight hours to
16:24:11 14 actually image a one-terabit hard drive or what we're starting to
16:24:16 15 see in a common computer. So what we do is we will seize the
16:24:19 16 evidence onsite, take it back and enter it into our evidence
16:24:24 17 system as to which time I will go down and retrieve it from our
16:24:27 18 secure evidence storage, take it up to my laboratory in San
16:24:30 19 Antonio, and create that image there on that site.
16:24:33 20 The image is the same whether we get it onsite or off
16:24:37 21 but generally we will -- if we can, we will seize the evidence so
16:24:40 22 that we can then make the image as -- because of the time
16:24:45 23 required is so long.
16:24:47 24 Q. We've been talking a lot about computers. Can you tell the
16:24:51 25 jury a little bit about many of the devices like telephones? Do

16:24:56 1 you also -- do you also deal with that?

16:25:00 2 A. Yes, ma'am. I do also process cellphones and GPS and

16:25:06 3 certified as a forensic examiner by the FBI for that.

16:25:09 4 Q. Can you tell me what Cellebrite is and how it functions?

16:25:14 5 A. Cellebrite is a commercial product created by a company

16:25:18 6 called Cellebrite that originally when it came out, it was for

16:25:22 7 the cellphone stores. If you took your cellphone into a Verizon

16:25:27 8 store and wanted to upgrade, they would have a device that would

16:25:29 9 copy all of the data from your old cellphone and put it onto your

16:25:32 10 new one. They decided that this is a very important forensic

16:25:34 11 tool, also, that is necessary for law enforcement and other

16:25:39 12 investigative reasons.

16:25:39 13 What the Cellebrite does is they have spent a lot of

16:25:44 14 time and effort developing basically how the data is laid out on

16:25:49 15 a cellphone. Every cellphone manufacturer makes their programs

16:25:53 16 different. What Cellebrite does is they study that and they make

16:25:56 17 it easy for an investigator or for, like I said, Verizon sales

16:26:01 18 associate to just hook up a cellphone and pull all the data off

16:26:04 19 of that.

16:26:05 20 What we do at the Cellebrite generally is we will hook

16:26:07 21 up a cellphone, and it extracts the data and puts its onto a

16:26:12 22 thumb drive or directly onto a computer, and so, it's retrieving

16:26:16 23 information off of the cellphone, the call logs, the contact

16:26:20 24 list, text messages, and basically exports it out into a usable

16:26:25 25 format so that we can get the stuff off of the phone quickly and

16:26:29 1 easily to retain it.

16:26:31 2 Q. And this is a common tool that's used with the investigators
16:26:34 3 in the field?

16:26:34 4 A. Yes, ma'am, it is.

16:26:35 5 Q. And then, how do they take that information and relay it to
16:26:38 6 you?

16:26:38 7 A. There's a couple of methods. The Cellebrite, we're actually
16:26:42 8 using it as an investigative tool by the investigator. If it is

16:26:47 9 nothing special, the investigators, we train them on how to use

16:26:51 10 the Cellebrite. They do actually hook it up. It's all very

16:26:54 11 menu-driven to where they can select it. It will output the data

16:26:57 12 either to a thumb drive or to a computer, at which time either

16:27:01 13 one, we'll take the data and burn it into a CD or DVD so it can

16:27:06 14 be then entered into the investigative case file or evidence.

16:27:09 15 And then, if there is further analysis, they can actually bring

16:27:13 16 the phone to myself where I have a Cellebrite also. I use that

16:27:16 17 for data analysis. There's some advance tools that we can run,

16:27:20 18 also, to help try and find deleted files off of the cellphones

16:27:25 19 through the same tool.

16:27:26 20 Q. Once you make either one of these tools -- or let's go back
16:27:31 21 to computers since I'm jumping around a little bit.

16:27:34 22 Once you make these images, could you tell the jury
16:27:38 23 exactly what you do at this point, your role versus the role of
16:27:40 24 the investigator on the particular case?

16:27:43 25 A. Yes, ma'am. My role as a forensic examiner, generally I do

16:27:48 1 not have a knowledge -- an in-depth knowledge of the
16:27:52 2 investigation as it is ongoing. What my job is is to provide the
16:27:57 3 information that is recovered from a computer because my tools,
16:28:00 4 like I said, they're recovering and categorizing documents,
16:28:03 5 pictures, spreadsheets, videos, audio. They are providing it in
16:28:10 6 a manner to where we can allow the case agent who is
16:28:14 7 knowledgeable of the investigation to then go through and decide
16:28:18 8 what is relevant that is on the computer.

16:28:21 9 My role is to process the -- or process the hard drive.
16:28:26 10 It also recovers deleted files. It does what we call a data
16:28:31 11 carve where it just examines the whole hard drive for files that
16:28:34 12 the computer has long ago deleted and doesn't even consider to be
16:28:38 13 active anymore. But the role I have is to provide that to the
16:28:41 14 case agent so then, the case agent can then determine what is
16:28:44 15 relevant that is on the computer.

16:28:47 16 Q. In June of 2012, did you actually conduct the forensic
16:28:56 17 searches on seven different computers that were seized in seven
16:28:59 18 different locations throughout the United States in reference to
16:29:02 19 Special Agent Scott Lawson's request?

16:29:04 20 A. Yes, ma'am.

16:29:04 21 Q. Those seven different locations were in Oklahoma, Austin and
16:29:13 22 California, among some of them, correct?

16:29:16 23 A. Yes, ma'am.

16:29:17 24 Q. Tell the ladies and gentlemen of the jury, did you actually
16:29:18 25 have the image made there at the site, or did you retrieve or

16:29:23 1 have the agents to retrieve the computers?

16:29:26 2 A. For the images that I've been working with, the case agent

16:29:29 3 on these cases, I actually made the images myself. I actually

16:29:33 4 had the computers, physically removed the hard drives and created

16:29:37 5 the images for the ones that we have been discussing. There was

16:29:41 6 one in California at Carlos Nayen's residence.

16:29:44 7 Q. Was that actually an image that was made of that particular

16:29:47 8 location?

16:29:47 9 A. I believe that one was --

16:29:53 10 Q. That was actually in New Mexico, wasn't it? I'm sorry. I

16:29:55 11 was confused on that. Was that correct?

16:29:58 12 A. Actually, I believe I did the image on that one. I created

16:30:01 13 that in my laboratory in San Antonio.

16:30:03 14 Q. Make sure you're on your toes.

16:30:04 15 A. Yes, ma'am.

16:30:05 16 Q. So once you got the computers back to the laboratory and

16:30:09 17 made the image, what did you do at that point?

16:30:12 18 A. Okay. The original computers we'll put back into our

16:30:15 19 evidence. Like I said before, we don't want to use the original

16:30:20 20 evidence for our processing. So it was the forensic image that I

16:30:26 21 had made, that is when I connect them to my forensic

16:30:29 22 workstations, run the software. It categorizes all the different

16:30:33 23 data that it finds, including the deleted files, which now we

16:30:39 24 call un-deleted, and then, also, the carved files, which are

16:30:42 25 those files that are just out in the free space, which are then

16:30:46 1 available to the case agent for his review.

16:30:48 2 Q. And Special Agent Scott Lawson, have you worked extensively

16:30:52 3 with him on this particular case?

16:30:53 4 A. Yes, ma'am. I have.

16:30:54 5 Q. Spent quite a few hours with him?

16:30:56 6 A. Quite a few hours familiarizing him with the actual

16:31:01 7 software, how to use it, working with him as he has questions as

16:31:04 8 he was going through and actually conducting the review of the

16:31:07 9 evidence in this matter.

16:31:08 10 Q. And in fact, last night, the three of us met and we went

16:31:11 11 over some of this evidence; is that correct?

16:31:13 12 A. Yes, ma'am. That is correct.

16:31:15 13 Q. I'd like to show you what has been marked as Government's

16:31:29 14 Exhibit 364OK, Exhibit A. Try not to get these out of order. Do

16:31:37 15 you recognize that?

16:31:38 16 A. Yes, I do. This is a DVD that I produced after Special

16:31:42 17 Agent Lawson had completed his review and marked the files that

16:31:46 18 he was interested in. I copied them out and exported them and

16:31:50 19 created a DVD that has those files for him. I created this DVD

16:31:54 20 and it contains my initials from when I did create it.

16:31:58 21 Q. And that was a computer that was located in Lexington,

16:32:02 22 correct?

16:32:02 23 A. Yes, ma'am.

16:32:03 24 Q. Government's Exhibit 364N, as in Nancy, M as in Mary, A?

16:32:25 25 A. Yes, ma'am. Once again, another DVD, containing the files

16:32:29 1 selected by Case Agent Lawson that I exported and copied onto a
16:32:33 2 DVD, the CD, the DVD I created with my initials on them.
16:32:39 3 Q. And the jury can see that attached to each of these CDs,
16:32:43 4 there are some images that are attached to each one of these.
16:32:46 5 Are these the relevant images that come from each of these CDs
16:32:50 6 that will be presented by Special Agent Scott Lawson?
16:32:52 7 A. Yes, ma'am.
16:32:53 8 Q. All right. And I should say, for the record, this is what
16:33:00 9 you reviewed yesterday when we went over the evidence, correct?
16:33:02 10 A. Yes, ma'am.
16:33:06 11 Q. All right. 364ATX, Austin, Texas. Will you look in and
16:33:12 12 look at the disc on A of this exhibit and identify it for us?
16:33:18 13 A. Yes, ma'am. Once again, DVD that I created containing the
16:33:23 14 file selected by the case agent, copied onto a DVD containing my
16:33:27 15 initials as I created it.
16:33:29 16 Q. And, again, did you go through and make sure that the images
16:33:32 17 that were attached were actually contained on this CD?
16:33:35 18 A. Yes, ma'am. I have reviewed them with case Agent Lawson.
16:33:40 19 Q. Government's Exhibit 364CA. Do you recognize that disc?
16:33:48 20 A. Yes, ma'am. Once again, DVD containing those case files,
16:33:53 21 containing my initials and CD -- or DVD I created.
16:33:59 22 Q. And each one of these are identified through the exhibit
16:34:02 23 number actually where they were located. CA meaning California.
16:34:05 24 OK obviously meaning Oklahoma. NM meaning New Mexico. ATX
16:34:12 25 meaning Austin, Texas; is that correct?

16:34:14 1 A. Yes, ma'am. That is correct.

16:34:16 2 Q. As you went through the images that are contained with these

16:34:23 3 CDs, did you determine the path that these images were actually

16:34:36 4 located?

16:34:36 5 A. As part of the forensic report that I create for the files

16:34:40 6 that the case agent selected, it exports a report that shows the

16:34:45 7 path or the location on each computer hard drive where these

16:34:49 8 files are located. And then, I went over with case Agent Lawson

16:34:55 9 for each of these submitted evidence items, the path that where

16:34:59 10 they came from, what item or computer.

16:35:04 11 Q. And instead of going through 15 to 100 different images and

16:35:08 12 their paths, did we go ahead and put them in certain categories

16:35:10 13 so that we could do this a little bit quicker for the jury?

16:35:13 14 A. Yes, ma'am. We did.

16:35:14 15 Q. The first category that we put in was user files. Can you

16:35:20 16 tell the ladies and gentlemen of the jury what it means to have

16:35:23 17 an image in a user file?

16:35:25 18 A. Well, I was trying to categorize where we're going to find

16:35:29 19 specifically in this case the files that were relevant. And the

16:35:32 20 first one was -- is the user folder. When you create a user

16:35:36 21 account on your computer, it puts all of your user data by

16:35:42 22 default into certain folders. If you save a document, if you

16:35:46 23 start Word -- Microsoft Word and save a document, it's going to

16:35:50 24 put it in My Documents folder. Well, that folder is located

16:35:54 25 under a user folder that is given a name when you first establish

16:35:58 1 your computer. It can be anything from a name -- your name is
16:36:05 2 John and you create your user ID as John. You will see that on
16:36:09 3 the computer, you will see a user folder where they put all the
16:36:12 4 different users, and each user identified in the computer will be
16:36:15 5 -- if there's a John and a Elizabeth, you'll see a folder for
16:36:18 6 each one, and that's where their files are kept by default.

16:36:22 7 So files that are generally stored in a user folder are
16:36:26 8 put there by an action, by creating a document, saving a
16:36:31 9 document, or something like that. And so, the computer is merely
16:36:36 10 trying to keep everyone's documents separated and segregated into
16:36:39 11 their users areas.

16:36:40 12 Q. So it's an affirmative step?

16:36:42 13 A. Yes, ma'am.

16:36:42 14 Q. All right. The other category was a thumb cache. What is a
16:36:46 15 cache?

16:36:47 16 A. A cache is commonly now used as a computing term for
16:36:52 17 basically it is a store. It is where a computer is trying to
16:36:56 18 save time and everything is about time. Where a computer is
16:37:00 19 actually saving something so if it needs to reuse it, it can
16:37:04 20 quickly pull it. Most commonly talked about, an internet cache.
16:37:10 21 In this case, we're talking about internet cache is where you go
16:37:13 22 to a website and you've downloaded the website to your computer.
16:37:16 23 The computer actually saves that. So if you go back to that
16:37:19 24 website, it will see if the website has changed or not. If it
16:37:24 25 hasn't, it can just load the cache directly off of your hard

16:37:28 1 drive and represent the website to you immediately again. If it
16:37:32 2 has changed, it will go ahead and download again.

16:37:33 3 But basically what it is, it is a store so where if you
16:37:37 4 have visited a website, it will save that website or files from
16:37:40 5 that website on your computer in the cache directory.

16:37:45 6 Q. So if I go to a particular internet website and I have that
16:37:50 7 image of Target, or a newspaper, or something like that, it will
16:37:54 8 just pull it right back up. Is that what you're saying?

16:37:56 9 A. If it sees that it's the same as it was before, right. It
16:38:00 10 will just pull it right up.

16:38:02 11 Q. And that will be an Internet Explorer cache. Is that what
16:38:06 12 you're saying?

16:38:06 13 A. Yes, ma'am.

16:38:07 14 Q. What is a Firefox cache then?

16:38:09 15 A. Firefox cache is basically the same thing. It's just used
16:38:12 16 by the Firefox browser. It does exactly the same thing: It
16:38:16 17 caches the information for use again.

16:38:18 18 Q. I think my previous question was the thumbs cache. Tell me
16:38:22 19 about that. Is that a little different?

16:38:23 20 A. Thumbs cache is a little different. The thumbs cache, every
16:38:27 21 time on Windows computers you open up a folder on your computer
16:38:31 22 and you're looking at images, one of the options you have to see
16:38:34 23 those files is either large, small icons, extra large icons.
16:38:40 24 When you open up a folder and look at pictures within a folder,
16:38:43 25 what it's doing is it's creating what it calls a thumbnail. It

16:38:47 1 is creating that icon image that it shows on the folder. Well,
16:38:50 2 the computer stores that because it doesn't want to have to
16:38:52 3 recreate these icons every time.

16:38:55 4 So what it does, it creates a thumbs cache, which is a
16:38:58 5 file that contains multiple sizes. It has the small, medium and
16:39:02 6 large icon size pictures that it stores on the computer. And so,
16:39:06 7 what it does is if you go back to that folder and open the folder
16:39:09 8 with those pictures in it again and want to see the pictures
16:39:13 9 represented as icons, it doesn't have to rescan or recreate the
16:39:16 10 thumbnail image. It just pulls it from the thumbs cache. Once
16:39:20 11 again, it's trying to shortcut and make the computer work faster
16:39:22 12 that way.

16:39:22 13 Q. Something a little bit different than all these is called a
16:39:26 14 carved file. Is that correct?

16:39:28 15 A. Yes, ma'am.

16:39:28 16 Q. What is that?

16:39:29 17 A. A carved file, this is where a file has been deleted or is
16:39:33 18 no longer used by the operating system, and it's basically in the
16:39:36 19 free space of the computer that isn't being used anymore. It's a
16:39:40 20 file that's been -- either the system created it and no longer
16:39:43 21 needs it or it's a file you deleted and entered in the recycle
16:39:47 22 bin and it's been quite a while, and the computer has basically
16:39:50 23 allocated that space saying -- or unallocated it saying it's
16:39:53 24 available for any kind of use.

16:39:55 25 What the software we use when processing this evidence,

16:39:59 1 it scans all of these free areas and finds remnants of files and
16:40:04 2 it names them carved files because literally, it just carves it
16:40:08 3 out of all of the bits and bytes that are out there in the free
16:40:11 4 space.

16:40:12 5 Q. And, again, you went over all of these different path files
16:40:17 6 with Special Agent Lawson, right?

16:40:19 7 A. Yes, ma'am.

16:40:20 8 Q. One final question. If you have -- you're on the Internet
16:40:24 9 Explorer cache, does that mean that at least at some point, a
16:40:28 10 user has been entering into a website to view that image?

16:40:34 11 A. If a file is on an internet cache, it means the computer has
16:40:38 12 loaded that web page is what that means. So at some point on the
16:40:42 13 screen, that web page was displayed.

16:40:49 14 Q. Pass the witness, your Honor.

16:40:54 15 CROSS-EXAMINATION

16:40:54 16 BY MR. FINN:

16:40:56 17 Q. May it please the Court, members of the jury.

16:40:58 18 Special Agent Cox, my name is David Finn. I don't
16:41:01 19 think we've ever met, have we?

16:41:02 20 A. No, sir. We haven't.

16:41:03 21 Q. I've got a lot of respect for what you do. My dad was in
16:41:05 22 the FBI under J. Edgar Hoover about 50 years ago.

16:41:10 23 A. Thank you, sir.

16:41:11 24 Q. I just have a couple of questions. I represent Jose over
16:41:14 25 here. Thank you, Jose, Trevino.

16:41:18 1 And did you look at some of the other computers or all
16:41:22 2 of the computers that were seized from the ranch up in Oklahoma?
16:41:26 3 A. Yes, sir, I did.
16:41:27 4 Q. And there were quite a few of them, weren't there?
16:41:29 5 A. Yes, sir. There were.
16:41:30 6 Q. Like, I don't know, six, seven maybe?
16:41:32 7 A. There were eight.
16:41:33 8 Q. Eight. Okay. And what about the computers that were seized
16:41:38 9 from the Balch Springs house, the residence? Balch Springs is up
16:41:43 10 by Dallas. Do you remember looking at those?
16:41:45 11 A. That one, not specifically. I don't remember because, once
16:41:49 12 again, when I processed them, I don't necessarily get into the
16:41:53 13 guts of what is on there.
16:41:54 14 Q. Fair enough. And did you also look at the various
16:41:58 15 telephones that were seized from the ranch and from the
16:42:01 16 residence?
16:42:01 17 A. I did look at a selection. I don't know where exactly they
16:42:04 18 were, if they were from a ranch or not.
16:42:06 19 Q. Do you remember about how many phones you looked at,
16:42:11 20 approximately, ballpark?
16:42:15 21 A. Maybe ten. I don't know for sure because -- we did have
16:42:19 22 CART personnel in Oklahoma. I believe at the ranch.
16:42:22 23 Q. Right. And you understand there are a lot of workers there,
16:42:27 24 there was construction going on, there's a wife, there's kids,
16:42:30 25 there were quite a few people in that area. Did you understand

16:42:32 1 that?

16:42:32 2 A. I guess. I wasn't involved in that search area.

16:42:35 3 Q. You weren't there for it?

16:42:35 4 A. No, sir. I was not.

16:42:36 5 Q. So you looked and analyzed -- and if you did. I don't want

16:42:41 6 to put words in your mouth -- every single computer that was

16:42:46 7 seized to your knowledge and every single phone that was seized

16:42:50 8 to your knowledge; is that correct?

16:42:52 9 A. Well, every computer that the case agent asked me to analyze

16:42:57 10 are the ones I did.

16:42:58 11 Q. Okay. Well, was the agent Agent Lawson, the gentleman

16:43:01 12 seated over here?

16:43:02 13 A. Yes, sir.

16:43:02 14 Q. And he's been around for a while. He's no spring chicken,

16:43:06 15 right? No offense. He's experienced, right?

16:43:09 16 A. Okay. Yes, sir.

16:43:12 17 Q. Okay. So if he thought something was worthy of being

16:43:16 18 analyzed and it's safe to say, he grabs something worthy of being

16:43:21 19 analyzed in his opinion and he gave it to you, correct?

16:43:24 20 A. I would assume so. Yes, sir.

16:43:26 21 Q. Okay. Well, I mean, you know, you don't want to assume so.

16:43:29 22 You know him, he's good?

16:43:30 23 A. I don't know what was collected in the whole case. I only

16:43:33 24 know what they asked me to process.

16:43:34 25 Q. Let me ask it this way. You don't have any reason to

16:43:36 1 believe that Special Agent Lawson withheld anything that might
16:43:40 2 have been relevant to your analysis, do you?

16:43:42 3 A. No, sir. I do not.

16:43:43 4 Q. Okay. Good.

16:43:45 5 The evidence that just got admitted, do you know which
16:43:52 6 computer that came from? Because I haven't seen it. I have no
16:43:55 7 idea what's on that disc.

16:43:56 8 A. Right. Each one, I do know which ones they came from.

16:44:00 9 Q. You do?

16:44:01 10 A. Yes, sir. On the CD, it actually shows which computers of
16:44:05 11 which areas they came from.

16:44:06 12 Q. Okay. Well, the only one that I'm concerned with is the
16:44:09 13 computer or computers that are alleged to belong to my client
16:44:13 14 Jose Trevino, okay?

16:44:14 15 A. Yes, sir.

16:44:14 16 Q. So I know it's late in the day, but I've got a piece of
16:44:19 17 paper and I've got a pen. I have not seen this to my knowledge.
16:44:23 18 It may have been available. I don't know. But this is kind of
16:44:27 19 news to me.

16:44:28 20 MS. FERNALD: For the record, this has been available
16:44:30 21 for the defense for a very long time.

16:44:31 22 THE COURT: It has. It's been available.

16:44:33 23 MS. FERNALD: December, I think, of 2012.

16:44:39 24 THE COURT: You may proceed.

16:44:41 25 Q. (BY MR. FINN) Okay. Let's go over whatever you found that

16:44:46 1 you think is relevant, okay? Because whatever is on that disc is
16:44:51 2 deemed by someone over at this table to be relevant or important.
16:44:54 3 A. Yes, sir.
16:44:55 4 Q. So give me and the jurors a little preview what we can
16:44:58 5 expect to see on that disc as it pertains to Lexington, Oklahoma
16:45:02 6 for Jose Trevino.
16:45:03 7 A. Okay. Like I said, I didn't select them, but I would -- I
16:45:08 8 know from the sample that we were reviewing, many pictures, PDFs
16:45:14 9 or documents, scanned documents. I don't know in detail which
16:45:20 10 ones, but that would be mainly photographs and documents, I guess
16:45:24 11 I scanned images.
16:45:25 12 Q. Photographs of horses, horse documents, things like that?
16:45:29 13 A. I didn't see any horse pictures. Yes, sir.
16:45:31 14 Q. Okay. Any smoking guns?
16:45:34 15 A. Once again, within the relevance or what are the key factors
16:45:38 16 of the case. So I don't know what to say to about that.
16:45:41 17 Q. Okay. So if I wanted to ask those specific questions
16:45:44 18 instead of directing them to you, I should direct them to Special
16:45:47 19 Agent Lawson; is that fair?
16:45:48 20 A. Yes, sir.
16:45:49 21 Q. All right. Thank you. That's all I have, your Honor.
16:45:53 22 MR. SANCHEZ: No questions, your Honor.
16:45:54 23 THE COURT: Mr. Womack.
16:45:55 24 MR. WOMACK: Very briefly.
16:45:56 25

CROSS-EXAMINATION

16:45:56 1 BY MR. WOMACK:

16:46:01 3 Q. Special Agent Cox, I'm Guy Womack from Houston.

16:46:03 4 A. Yes, sir.

16:46:03 5 Q. We have -- I guess these computer things somewhere. Sir,

16:46:39 6 I'm going to hand you Government's Exhibit 364NM.

16:46:43 7 A. Yes.

16:46:43 8 Q. Appear to be a series of tabs in there. Sir, from your

16:46:49 9 analysis of that media.

16:46:54 10 A. Yes, sir.

16:46:55 11 Q. How many computers were seized from New Mexico?

16:47:05 12 A. I can't say right offhand. I know we have --

16:47:08 13 Q. If you look at that, would it be obvious to you or not?

16:47:11 14 A. Well, the way we did -- it just says this is from New

16:47:16 15 Mexico. I divided them up by location. These do not have the

16:47:21 16 actual paths. But the paths that we worked on from where the

16:47:25 17 files came from, they actually do have which computer each of the

16:47:31 18 documents comes from. But I can't tell just by looking at it

16:47:34 19 which computers they came from.

16:47:35 20 Q. Okay. And I guess what I really want to know is, is all

16:47:42 21 that from one laptop computer that was seized in New Mexico?

16:47:46 22 A. I can't remember exactly how many boxes from New Mexico. I

16:47:50 23 wouldn't be able to say.

16:47:51 24 Q. Okay.

16:47:55 25 A. It's possible.

16:47:56 1 Q. So you don't know if there was more than one computer.

16:48:01 2 Well --

16:48:02 3 A. No, sir.

16:48:02 4 Q. Do you know if these -- it that's all from a laptop? Was it

16:48:04 5 from a desktop or some other kind of computer?

16:48:07 6 A. By looking through -- just through the documents, I can't

16:48:10 7 say where they came from exactly. My CD basically or my evidence

16:48:14 8 item just says that it's from New Mexico. So I don't remember

16:48:16 9 exactly what the models are.

16:48:18 10 Q. I gotcha.

16:48:19 11 A. For each of the ones.

16:48:20 12 Q. And there's nothing that you have, like an evidence custody

16:48:24 13 document or any kind of a document available here that will tell

16:48:27 14 you how many computers that data came from?

16:48:32 15 A. I don't have any of the evidence documents. Nothing would

16:48:36 16 be here. Like I said, we were going through talking about which

16:48:40 17 -- when we talk about paths as to where the path is for where

16:48:43 18 these files come from, the path actually starts with an indicator

16:48:47 19 showing which computer and which evidence item, which as we call

16:48:51 20 it, a 1B number each of these items come from.

16:48:54 21 Q. Can you tell me the timeframe of the data found within these

16:49:03 22 computers? For example, does it have data going back to 2009 or

16:49:07 23 is it all in 2012?

16:49:10 24 A. I wouldn't be able to tell without actually looking at the

16:49:13 25 items on the CD because that wasn't part of my analysis. It was

16:49:18 1 providing timeline analysis showing any of the date -- all the
16:49:21 2 dates are included on the CD showing what each file has on there
16:49:26 3 or the creation modified and access times. Those are all on
16:49:30 4 there, but I did not look at it specifically.

16:49:33 5 Q. You picked up a little envelope with a disc. Is that a CD
16:49:36 6 or a DVD?

16:49:38 7 A. It's a DVD.

16:49:38 8 Q. DVD?

16:49:39 9 A. It's labeled as DVD.

16:49:40 10 Q. And would you create one DVD per computer?

16:49:42 11 A. No, sir.

16:49:44 12 Q. Would you do more than one DVD per computer?

16:49:47 13 A. Depends on -- I can do more than one computer on one DVD.

16:49:51 14 But it depends on the size of the evidence that the case agent

16:49:54 15 decides. A lot of times, you know, a DVD will only hold so much

16:49:58 16 data. If it goes over the 4.7 gigabytes, I have to use another

16:50:02 17 DVD.

16:50:02 18 Q. Okay. And that particular exhibit, New Mexico, how many

16:50:07 19 DVDs do you have?

16:50:08 20 A. One.

16:50:10 21 Q. And so, that DVD would have all the data seized from one or

16:50:19 22 more computers in New Mexico?

16:50:20 23 A. They came in with the batch of evidence that I was provided

16:50:24 24 for the New Mexico search site that they did that would all be on

16:50:28 25 one -- as one DVD.

16:50:30 1 Q. Right. And if we were to open that DVD and look at it, is
16:50:38 2 there some kind of a menu or something that would show us how
16:50:43 3 many computers are on that DVD?

16:50:44 4 A. It will show -- well, what it's showing is it's showing the
16:50:48 5 files that are collected and there were -- marked as relevant by
16:50:52 6 case Agent Lawson. It will show the files and where they came
16:50:55 7 from for each file.

16:50:59 8 Q. And looking at that, can we tell how many computers were
16:51:03 9 seized and analyzed by you?

16:51:07 10 A. Well, as long as, once again, if there was a computer that
16:51:11 11 had no relevant files, those files would not be included on this.
16:51:15 12 So it would only be the files that were deemed relevant would be
16:51:19 13 on here. So if there's another computer -- I can't remember
16:51:22 14 exactly how many computers came from New Mexico. That would be
16:51:27 15 in our evidence logs. But those computers, if there was anything
16:51:32 16 relevant would be all collected together and put onto the DVD.

16:51:36 17 Q. Okay, sir. Thank you. I'll collect that back up. And,
16:51:45 18 sir, I have no further questions.

16:51:46 19 THE COURT: Mr. Esper.

16:51:48 20 MR. ESPER: I wouldn't even know where to start, Judge.
16:51:50 21 No questions.

16:51:51 22 MR. MAYR: That's what I'm here for, Judge. If I may.

16:51:54 23 THE COURT: You may.

16:51:54 24

16:51:55 25

16:51:55 1 CROSS-EXAMINATION

16:51:55 2 BY MR. MAYR:

16:51:58 3 Q. Special Agent Cox, good afternoon.

16:52:00 4 A. Yes, sir.

16:52:01 5 Q. My name is Brent Mayr. Do you recognize that name?

16:52:04 6 A. Yes, sir, I do.

16:52:04 7 Q. Do you recognize that name because I left you several

16:52:07 8 messages trying to get a copy of my client's image, right?

16:52:10 9 A. Right.

16:52:10 10 Q. And I did receive that from you and I appreciate that. Took

16:52:15 11 a little bit of time. I just need to ask you a couple of brief

16:52:18 12 questions.

16:52:18 13 A. Certainly.

16:52:18 14 Q. These relevant items that you pulled out of here -- and,

16:52:23 15 again, there's been already a question about that that was

16:52:25 16 determined by Agent Lawson, right?

16:52:27 17 A. Yes, sir.

16:52:27 18 Q. Would he know where these specific files, whether it be a

16:52:34 19 JPEG, whether it be a TIFF, whether it be a Word document, would

16:52:40 20 he know where exactly on the computer those were located?

16:52:43 21 A. As he's going through, if he selects an image or something,

16:52:47 22 it will show him where it came from.

16:52:49 23 Q. Okay.

16:52:49 24 A. And then, once he selects it, marks it as a relevant file,

16:52:53 25 bookmarks it, as we call it, when I create my final forensic

16:52:58 1 report that's on the DVD, that is when basically it gives all the
16:53:03 2 pertinent information about the file. It gives the dates, the
16:53:05 3 path, and all of that.

16:53:06 4 Q. Now, if I asked you specific questions about my client's
16:53:14 5 computers and how many were seized, what was on them, are those
16:53:17 6 questions that you could answer right now, or are you just not
16:53:19 7 prepared to do that?

16:53:21 8 A. I mean, I can go over -- I can't say exactly what's on each
16:53:25 9 one. I know that there were a number of computers from the
16:53:28 10 Austin site.

16:53:29 11 Q. Right.

16:53:30 12 A. I do remember those well.

16:53:31 13 Q. Do you remember that it appeared from file names, user
16:53:38 14 profiles, documents created, that the computer was used primarily
16:53:44 15 by a Jessica Huitron?

16:53:46 16 A. I do remember that user folder name. Yes.

16:53:48 17 Q. All right. Now, if there's relevant -- what I deem or
16:53:56 18 relevant to my client's case -- let me ask you this. Do you
16:54:01 19 recall seeing QuickBooks files on those computers?

16:54:04 20 A. I cannot say for sure on that. I do not remember.

16:54:06 21 Q. Okay. Any sort of accounting or tax software, who would be
16:54:13 22 the person to talk to about that to explain those other things
16:54:16 23 found on there?

16:54:17 24 A. Once again, the case agent is the one that was going through
16:54:20 25 to look at what exactly was on the computer.

16:54:23 1 Q. If there's something relevant that's on the computer, like a
16:54:27 2 QuickBooks -- access to a QuickBooks account and I said that
16:54:30 3 that's relevant, could you help me pull that off?

16:54:32 4 A. Yes, sir.

16:54:33 5 Q. Okay. With that, Judge, I have no further questions.

16:54:39 6 THE COURT: Any redirect?

16:54:42 7 MS. FERNALD: No further questions, your Honor. May
16:54:44 8 this witness be excused?

16:54:46 9 MR. FINN: No objection.

16:54:48 10 MR. MAYR: Judge, I do. I would like to keep him on
16:54:49 11 call and available if we need to shore up anything with the
16:54:52 12 computer materials.

16:54:55 13 THE COURT: Be available. Don't go --

16:54:58 14 THE WITNESS: Do you need me in town or San Antonio?

16:55:01 15 THE COURT: I don't need you in town until he does. If
16:55:05 16 he thinks he does.

16:55:06 17 THE WITNESS: Yes, sir.

16:55:07 18 THE COURT: But he will not need you until Monday.

16:55:12 19 THE WITNESS: Okay, sir. I'll be available for the
16:55:14 20 Court.

16:55:14 21 THE COURT: Run like a rabbit.

16:55:16 22 THE WITNESS: Yes, sir, I will.

16:55:19 23 THE COURT: All right.

16:55:20 24 MR. MAYR: Thank you, sir.

16:55:21 25 THE COURT: He's on call.

16:55:24 1 THE WITNESS: Okay. Thank you, sir.

16:55:25 2 THE COURT: Yes.

16:55:30 3 Members of the jury, how are you doing? You want a

16:55:32 4 little short break?

16:55:33 5 THE JUROR: Yes.

16:55:34 6 THE COURT: Okay. Short break. Remember the

16:55:36 7 instructions.

16:56:08 8 (Jury not present.)

17:06:33 9 (Recess.)

17:07:20 10 (Jury present.)

17:08:04 11 THE COURT: You may call your witness.

17:08:07 12 MR. GARDNER: Government calls Special Agent Kevin

17:08:09 13 Hicks.

17:08:29 14 (Witness sworn.)

17:08:34 15 THE COURT: Tell us, please, your full name and spell

17:08:41 16 your last, please.

17:08:42 17 THE WITNESS: Kevin Hicks, H-I-C-K-S.

17:08:46 18 MR. GARDNER: Thank you, your Honor.

17:08:47 19 KEVIN HICKS, called by the Government, duly sworn.

17:08:47 20 DIRECT EXAMINATION

17:08:47 21 BY MR. GARDNER:

17:08:48 22 Q. Good afternoon, Special Agent. If you will, could you

17:08:51 23 please introduce yourself to the jury? Tell them what you do for

17:08:53 24 a living and where.

17:08:53 25 A. I'm a special agent with the FBI. My name is Kevin Hicks.

17:08:56 1 I've been employed with the FBI for a little over 17 years.

17:09:00 2 Currently assigned to the Drug Enforcement Administration, HIDA

17:09:05 3 Task Force in Austin.

17:09:06 4 Q. And, sir, did you participate in the execution of a search

17:09:10 5 warrant involved in this investigation?

17:09:11 6 A. A consent search at 8008 Seeling Drive, the residence of

17:09:17 7 Eusevio Huitron. And I was also -- participated in limited

17:09:23 8 capacity at a search warrant at Huitron Homes, which is 4216

17:09:28 9 Highway 183 in Austin.

17:09:29 10 Q. If you will, can you explain to the jury -- you talked about

17:09:34 11 the Seeling Drive?

17:09:36 12 A. Seeling.

17:09:40 13 Q. Can you talk about exactly what a consent search exists of?

17:09:42 14 A. On the morning of the 12th, I was a team leader on a team

17:09:46 15 that was responsible for the execution of an arrest warrant on

17:09:49 16 Mr. Eusevio Huitron. Executed that arrest warrant and then, in

17:09:56 17 speaking with Mr. Huitron, he gave us consent to search his

17:09:58 18 residence, and based on that consent, we searched the residence.

17:10:02 19 Q. And during the time that you were searching the residence,

17:10:08 20 did you have the opportunity to observe Mr. Huitron speaking in

17:10:11 21 Spanish at one point?

17:10:12 22 A. Yes.

17:10:13 23 Q. And did you address him about him speaking -- let me back

17:10:17 24 up. Who was he talking to?

17:10:18 25 A. He was speaking to his sons. They were present in the

17:10:21 1 house.

17:10:21 2 Q. And did that cause you some amount of concern?

17:10:23 3 A. It did. We had five individuals in the -- five adults in

17:10:27 4 the house that day, and they were asked not to speak with one

17:10:31 5 another directly while we're in the house but, rather, speak to a

17:10:34 6 law enforcement agent regarding any questions, needs or concerns

17:10:38 7 while we're in the house.

17:10:39 8 Q. And do you speak Spanish, sir?

17:10:40 9 A. I don't.

17:10:41 10 Q. And did you address Mr. Huitron with regards to the fact he

17:10:44 11 was speaking to other members?

17:10:46 12 A. He was addressed and asked not to speak with other family

17:10:49 13 members in Spanish.

17:10:50 14 Q. And did you address him in English or in Spanish?

17:10:53 15 A. Through a translator in Spanish.

17:10:55 16 Q. Okay. And what was his response?

17:10:57 17 A. After being asked not to do that the last time, he said,

17:11:03 18 "I'll speak whatever fucking language I want," and he said that

17:11:06 19 in English.

17:11:06 20 Q. Okay. And so, you understand where Mr. Huitron might have

17:11:10 21 been upset that federal agents are in his house?

17:11:13 22 A. Certainly.

17:11:13 23 Q. But the point is, did he understand and speak English?

17:11:17 24 A. Yes.

17:11:18 25 Q. And was Mr. Huitron removed from the house after that?

17:11:21 1 A. He was removed, taken out to the front yard where a DPS
17:11:25 2 cruiser was parked, and that's where he remained for the
17:11:27 3 remainder of the search.

17:11:29 4 Q. I'm going to show you Government's Exhibits 418, 41 -- I'm
17:11:33 5 sorry, 418A, B and C. Do you recognize those, sir?

17:11:38 6 A. I do. 418A is the front of 8008 Seeling Drive, Mr.
17:11:48 7 Huitron's home. 418B is the dresser that was located on the --
17:11:52 8 as you see the house on the left side in a bedroom, and the
17:11:57 9 dresser contains clothing and large sum of cash. And 418C is a
17:12:07 10 dresser drawer above the one just described that contains a box
17:12:09 11 with \$100 bills in that box.

17:12:13 12 Q. Your Honor, we'd offer Government's Exhibits 418A through C.
17:12:18 13 MR. ESPER: No objection, your Honor.
17:12:19 14 THE COURT: They're received.
17:12:24 15 Q. (BY MR. GARDNER) Again, could you explain to the jury,
17:12:39 16 showing on the screen 418A, just the front of the house to help
17:12:43 17 identify the house; is that correct?
17:12:44 18 A. That's correct.
17:12:47 19 Q. Show the next picture, please.
17:12:53 20 A. That's in a bedroom, a large sum of cash in the second
17:12:57 21 drawer of the dresser in the bedroom.
17:12:59 22 Q. Now, other than this drawer, was there cash located in other
17:13:02 23 locations?
17:13:03 24 A. The drawer right above it, there was a box with cash in it.
17:13:07 25 And then, on top of the dresser was a wallet that had \$100 bills

17:13:13 1 in it.

17:13:13 2 Q. To be perfectly up front, did you discover through visiting

17:13:18 3 with other family members who this room belonged to?

17:13:20 4 A. Yes.

17:13:20 5 Q. And who was that?

17:13:21 6 A. Adrian Huitron.

17:13:24 7 Q. Now, turning your attention -- it's a little dark on the

17:13:27 8 screen, but how is this amount of money that I'm circling in the

17:13:31 9 lower left-hand corner packaged or banded together?

17:13:37 10 A. That since there's no banding, it's obviously been folded

17:13:41 11 together for a period of time based on crease. Then looking at

17:13:45 12 the one directly to the right of that, obviously there's money

17:13:50 13 that's held together with rubber-bands. And if you look closely,

17:13:53 14 especially the one at the top, within the big rubber-band, there

17:13:56 15 are smaller rubber-bands that separate amounts of currency.

17:14:02 16 Q. And have you seen this type of banding before on currency?

17:14:06 17 A. I have.

17:14:06 18 Q. I guess main question is, is this consistent with one

17:14:10 19 payment or multiple payments?

17:14:13 20 A. Based on the packaging alone, it would appear that it's -

17:14:16 21 MR. ESPER: Objection, your Honor. Calls for

17:14:18 22 speculation on the part of the witness.

17:14:20 23 MR. GARDNER: I believe it calls for his experience,

17:14:23 24 your Honor.

17:14:23 25 THE COURT: Now.

17:14:25 1 MR. GARDNER: Yes, sir.

17:14:25 2 THE COURT: Overrule the objection. You may answer.

17:14:27 3 A. Based on packaging alone, it appears to have come from

17:14:30 4 different sources.

17:14:31 5 Q. (BY MR. GARDNER) Next photograph, please. And you could see

17:14:40 6 both from here, but is this the long portion you were discussing

17:14:44 7 earlier here on top?

17:14:45 8 A. Yes.

17:14:45 9 Q. And this is another portion of cash?

17:14:47 10 A. Yes.

17:14:47 11 Q. All right. And the denominations of this cash here?

17:14:50 12 A. \$100 bills.

17:14:52 13 Q. And, sir, between the three locations of cash, did you add

17:14:56 14 them up?

17:14:57 15 A. Yes.

17:14:58 16 Q. And what did you come to as an amount?

17:15:00 17 A. Final sum was \$12,758.

17:15:10 18 Q. Now, you had some items in front of you from a little

17:15:14 19 show-and-tell?

17:15:14 20 A. Yes.

17:15:15 21 Q. The jury's already heard from a Charles Cox about the use of

17:15:19 22 a Cellebrite. Was the use of a Cellebrite conducted at the

17:15:25 23 search warrant or the arrest warrant of Eusevio Huitron?

17:15:29 24 A. Yes.

17:15:29 25 Q. Could you just kind of pick up that machine on top and show

17:15:32 1 it to the jury, please?

17:15:34 2 A. This is the actual forensic extraction device. This is the

17:15:38 3 Cellebrite.

17:15:38 4 Q. And what's in your black case there?

17:15:41 5 A. And the black case contains the -- basically the cables that

17:15:45 6 would connect your Cellebrite to a particular cellphone.

17:15:48 7 Q. Okay. Can you lift that up so the jury can see it, please?

17:15:52 8 I'm sorry. Special Agent Hicks, could you show them like that?

17:15:59 9 And so, purpose of those cords is what?

17:16:02 10 A. The purpose of the cords is to have a conduit from yourself

17:16:07 11 brought to the port of a cellphone. And all cellphones are

17:16:11 12 generally different, so you have the different types of cables.

17:16:16 13 Q. You would agree with me, obviously the record won't reflect,

17:16:18 14 but is it a very portable instrument?

17:16:21 15 A. Yes.

17:16:22 16 Q. And in this case, did you hook up the phone of Eusevio

17:16:27 17 Huitron?

17:16:27 18 A. We identified Mr. Huitron's phone in the residence, took it

17:16:32 19 out to a vehicle that was parked in the front and did the

17:16:34 20 extraction from the vehicle.

17:16:36 21 Q. And then, as Mr. Cox testified to, that device creates its

17:16:43 22 own report, correct?

17:16:44 23 A. That's correct.

17:16:44 24 Q. Showing you Government's Exhibit 357. Is this a report

17:16:47 25 created from Eusevio Huitron's telephone?

17:16:51 1 A. Yes.

17:16:53 2 Q. And is this a report that you provided to the U.S.

17:16:55 3 Attorney's Office following the execution of the arrest warrant

17:16:59 4 on Mr. Eusevio Huitron?

17:17:01 5 A. Yes.

17:17:02 6 Q. Your Honor, we'd offer Government's Exhibit 357.

17:17:05 7 MR. ESPER: No objection, your Honor.

17:17:07 8 THE COURT: 357 is received.

17:17:10 9 Q. (BY MR. GARDNER) Special Agent Hicks, during the course of

17:17:14 10 your career, have you also been involved in the interception and

17:17:21 11 use of telephones?

17:17:22 12 A. Yes.

17:17:23 13 Q. And are you familiar with country codes with respect to

17:17:27 14 certain telephone numbers?

17:17:28 15 A. Yes.

17:17:34 16 Q. I'd like to identify this one to you. What I'm looking on

17:17:47 17 this page, what is this page right here? Where is this

17:17:50 18 information normally stored on a phone?

17:17:52 19 A. This is the address box for Mr. Huitron's phone.

17:17:55 20 Q. Okay. So if I wanted to look up Special Agent Hicks, I'd go

17:17:58 21 to him and then, hit call, correct?

17:18:00 22 A. Correct.

17:18:00 23 Q. So this individual named "Yo Yo" here on line 61?

17:18:06 24 A. Okay.

17:18:07 25 Q. Now, when you say country codes, the next line, 72 star 9

17:18:13 1 star 25922, what do you recognize that country as?

17:18:18 2 A. That's going to be a UFNI, a urban fleet number for a

17:18:24 3 Mexican Nextel phone.

17:18:26 4 Q. Mexican Nextel phone and what particular set of numbers here

17:18:31 5 identify it as such?

17:18:33 6 A. During the course of my wire intercepts, anything that will

17:18:38 7 start with 52, 62, 72, 92, those are all going to be Mexican

17:18:44 8 Nextel telephones.

17:18:46 9 Q. I'm showing you the next page. Actually identifies page 11

17:18:58 10 of 14. There's an entry for Victor. Are you familiar with the

17:19:04 11 U.S. area code 956?

17:19:06 12 A. Yes.

17:19:06 13 Q. And what location in the United States is that?

17:19:09 14 A. It's Laredo, McAllen, area code.

17:19:15 15 Q. And Carlos Nayen, spelled G-A-R-L-O-S in this case, and are

17:19:22 16 you familiar with that particular code?

17:19:24 17 A. The 124 with the star, it's going to be a domestic

17:19:29 18 push-to-talk number for a Nextel phone.

17:19:31 19 Q. In the United States?

17:19:32 20 A. Correct.

17:19:33 21 Q. And with respect to the 135 under Victor, what is that?

17:19:37 22 A. It's going to be, again, a domestic or United States

17:19:42 23 push-to-talk number.

17:19:43 24 Q. And showing you page 9 of 14, identifying the index No. 68,

17:20:05 25 that's that Saltillo, correct?

17:20:07 1 A. Correct.

17:20:08 2 Q. All right. 512 area code?

17:20:10 3 A. Austin, Central Texas.

17:20:11 4 Q. Okay. And a 143?

17:20:13 5 A. That's going to be, again, push-to-talk number in the United

17:20:21 6 States.

17:20:21 7 Q. Special Agent, you also said you took a part of a limited

17:20:26 8 search in the Highway 183 Huitron Homes, Huitron Painting?

17:20:29 9 A. I did. Once we had executed the arrest warrant on Mr.

17:20:32 10 Huitron, asked for keys, asked Mr. Huitron and his son for keys

17:20:39 11 for the business. Adrian Huitron identified the keys and which

17:20:44 12 key opened the business, and I took that key to Huitron Painting

17:20:49 13 and it was used to open the door.

17:20:51 14 Q. So, again, they were cooperative with respect to providing

17:20:54 15 you the keys?

17:20:54 16 A. Yes.

17:20:55 17 Q. All right. And did you, in fact, have a search warrant for

17:20:57 18 the 183 address?

17:20:59 19 A. Yes.

17:21:00 20 Q. All right. So could you have opened the door with or

17:21:02 21 without the keys?

17:21:03 22 A. Yes, we could have.

17:21:04 23 Q. Showing you pictures identified as Government's Exhibit 372A

17:21:08 24 through I.

17:21:10 25 A. Okay.

17:21:10 1 Q. Would you looked through those, please, sir, and see if you
17:21:13 2 could identify them?

17:21:14 3 A. 372A is the front of Huitron Homes, 4216 Highway 183. 372B,
17:21:24 4 if you're looking at the business, that's going to be an office,
17:21:29 5 the first office at the front on the left-hand side. 372C is
17:21:37 6 just another picture of the same office. 372D is going to be a
17:21:43 7 computer in that office. 372E, again, another computer and a
17:21:51 8 storage device in that office. 372F, as you come into the front
17:21:58 9 door of the office on the right-hand side, there was an office
17:22:01 10 space, and that's going to be a picture of that office. 372G, an
17:22:10 11 overall picture of the same office.

17:22:13 12 372H, that's going to be a computer in that office.

17:22:19 13 372I, as you proceed through the front two offices, there's a
17:22:24 14 hallway that leads into what's labeled here as room 5 and
17:22:29 15 essentially was a storage room, but it was set up -- kind of had
17:22:32 16 a little break area in there, coffee pot, microwave, et cetera, a
17:22:37 17 lot of filing cabinets in that room.

17:22:41 18 Q. And were these photos taken on June 12th of 2012?

17:22:45 19 A. Yes.

17:22:46 20 Q. Your Honor, I'll offer Government's Exhibit 372A through I.

17:22:50 21 MR. ESPER: No objection, your Honor.

17:22:55 22 THE COURT: 372 A through I are admitted.

17:23:01 23 Q. (BY MR. GARDNER) Special Agent Hicks, while those gentlemen
17:23:04 24 are looking those through photos, it's kind of hard to see the
17:23:08 25 layout or understand the layout from the photos. Would you agree

17:23:10 1 with that?

17:23:10 2 A. Yes.

17:23:11 3 Q. Could you just generally describe the layout of the office

17:23:13 4 itself?

17:23:14 5 A. As you come through the front door, on your left is just

17:23:19 6 kind of a narrow hallway or a box size office. At the very end

17:23:22 7 of that hallway is a closet. And then, when we made entry, there

17:23:27 8 was a locked door on the office that was on the left. Made entry

17:23:33 9 into that room to make sure it was clear. Going to the right,

17:23:38 10 again, in the main hallway on the right was the office that had

17:23:42 11 the paintings or the picture of the horses, et cetera. You come

17:23:46 12 out of that office, there's a hallway that leads into what looked

17:23:49 13 like was a break room, doors were on, clear passage through. And

17:23:54 14 you go through that room and looked like another utility room

17:23:57 15 that was used for storage, and I believe there was a dryer in

17:24:01 16 that room. And there were no doors or closed doors from the

17:24:07 17 offices on the right, all the way to the back.

17:24:09 18 Q. Okay. So would you characterize the office but for that one

17:24:12 19 locked door as fairly open?

17:24:14 20 A. Yes.

17:24:15 21 Q. Okay. People seem to have the ability to access any room in

17:24:19 22 the open space?

17:24:19 23 A. Yes.

17:24:20 24 Q. And, Special Agent Hicks, I'm only going to show you a

17:24:26 25 picture just for reference so the jury understands what we're

17:24:28 1 talking about. This is 372A. What is that, sir?

17:24:33 2 A. That's the front of Huitron Homes.

17:24:36 3 Q. Would you agree with me that the remainder of the pictures

17:24:39 4 just generally show the outline or the layout, rather, of the

17:24:42 5 rest of the office?

17:24:42 6 A. Yes.

17:24:43 7 Q. One second, your Honor. Your Honor, I'll pass the witness.

17:24:53 8 MS. WILLIAMS: No questions.

17:24:55 9 MR. WOMACK: No questions.

17:24:59 10 MR. ESPER: I have a few, your Honor.

17:25:00 11 THE COURT: All right, sir.

17:25:01 12 CROSS-EXAMINATION

17:25:01 13 BY MR. ESPER:

17:25:30 14 Q. Mr. Hicks, when you went out to Mr. Huitron's house, the

17:25:38 15 home there is a very modest home, is it not?

17:25:40 16 A. Yes.

17:25:41 17 Q. Okay. Do you know the size of it, the square footage by any

17:25:46 18 chance?

17:25:46 19 A. I don't.

17:25:47 20 Q. Okay. Very modest furniture in there?

17:25:50 21 A. It was a nice home.

17:25:52 22 Q. It was nice, but it's very modest, correct? Not anything

17:25:56 23 elaborate, is it?

17:25:57 24 A. No.

17:25:57 25 Q. Okay. And when you went there, you went with how many

17:26:05 1 agents?

17:26:06 2 A. I don't remember the total number, sir.

17:26:07 3 Q. There's usually a pretty -- a cadre of agents that go along

17:26:12 4 on these, isn't there?

17:26:13 5 A. Usually eight to ten. Maybe more.

17:26:15 6 Q. Sure. And you went there at about 6:30 in the morning,

17:26:19 7 correct?

17:26:19 8 A. Yes.

17:26:19 9 Q. Okay. And were you the -- were you the leader of the agents

17:26:24 10 there? Team leader?

17:26:26 11 A. Yes.

17:26:27 12 Q. Okay. Now, you also prepared in connection with this case a

17:26:36 13 report, did you not, that documented what you did, what you saw,

17:26:40 14 what happened, correct?

17:26:41 15 A. That's correct.

17:26:42 16 Q. And I realize it's basically just a two-page report, is it

17:26:47 17 not?

17:26:47 18 A. That's correct.

17:26:48 19 Q. And it doesn't include every minute detail. You want to

17:26:51 20 include details that are significant, correct?

17:26:53 21 A. Correct.

17:26:54 22 Q. Okay. Now, I believe -- and did you use this report to

17:26:58 23 refresh your memory before you came into court today?

17:27:00 24 A. Not today, but I have seen it.

17:27:02 25 Q. Sure. And you authored it, didn't you?

17:27:05 1 A. That's correct.

17:27:06 2 Q. I believe when you went in there, when you and your fellow

17:27:08 3 agents went in, of course, whenever you executed a search warrant

17:27:12 4 or execute an arrest warrant, you've got jackets on to -- so that

17:27:16 5 people know you're law enforcement.

17:27:17 6 A. Correct.

17:27:18 7 Q. Okay. Do you have weapons on you when you go?

17:27:21 8 A. Yes.

17:27:22 9 Q. Are they drawn or are they holstered?

17:27:26 10 A. Drawn.

17:27:26 11 Q. They're drawn?

17:27:28 12 A. Correct.

17:27:28 13 Q. So, in other words, you come into somebody's home and you're

17:27:31 14 there to -- basically it's a show of force, is it not?

17:27:34 15 A. Yes.

17:27:35 16 Q. Sure. Okay. And, actually, Mrs. Huitron, Denise Huitron

17:27:40 17 was -- actually had been outside and was walking back into the

17:27:43 18 house, right?

17:27:44 19 A. Yeah. That was the second time she had come out that

17:27:46 20 morning.

17:27:46 21 Q. Okay. And you had observed her come there and go out and

17:27:50 22 come in and go out, correct?

17:27:52 23 A. Two times.

17:27:53 24 Q. Okay. And, I mean, she wasn't coming out to scout around

17:27:55 25 and look for people, was she?

17:27:57 1 A. The second time, she actually talked to a neighbor, which,
17:28:02 2 embarrassing enough, the neighbor had come up to my vehicle
17:28:04 3 across the street and asked why I was there. So once we saw her
17:28:10 4 speaking with them, then we went ahead and executed the arrest
17:28:14 5 warrant. The initial plan was to -- for him to get his ride,
17:28:20 6 which he usually arrived around 7:00, and then, to have the
17:28:23 7 traffic stop conducted on that vehicle. But based on those
17:28:26 8 events, we sped up the process.

17:28:27 9 Q. Your plan was to conduct a traffic stop?

17:28:30 10 A. Correct.

17:28:31 11 Q. On Mr. Huitron?

17:28:32 12 A. Actually, he would be a passenger through watching his house
17:28:35 13 for multiple days. There was a white Ford truck or white Dodge
17:28:40 14 truck that was picking him up about 7:00 in the morning every
17:28:42 15 day. So.

17:28:43 16 Q. And where do you follow him to?

17:28:45 17 A. Basically just watch them pick him up and then, a couple of
17:28:48 18 times, we followed them out to his ranch in Dale.

17:28:52 19 Q. And whenever this vehicle would pick him up, it was very
17:28:55 20 early in the morning, wasn't it?

17:28:56 21 A. Usually around 7:00.

17:28:59 22 Q. And as it turned out on this particular day, he was already
17:29:03 23 at the home, correct? He hadn't left?

17:29:05 24 A. He was still at the house. Yes.

17:29:07 25 Q. Okay. And, actually, the day before when you were

17:29:11 1 surveilling, you made a determination that he wasn't even there
17:29:13 2 that day, correct?

17:29:15 3 A. The morning, the day before I saw him there.

17:29:18 4 Q. You saw him there the day before?

17:29:20 5 A. Uh-huh.

17:29:21 6 Q. In the evening or the morning?

17:29:22 7 A. Morning.

17:29:22 8 Q. Okay. You're certain about that?

17:29:24 9 A. I believe so.

17:29:25 10 Q. Okay. Well, I asked you if you're certain. Are you certain
17:29:29 11 or not?

17:29:29 12 A. There were a number of mornings that I was out there
17:29:32 13 observing and saw the white Dodge truck pick him up. And I
17:29:38 14 believe I was out there the morning -- to say with a hundred
17:29:40 15 percent certainty, I can't.

17:29:42 16 Q. But you didn't generate any reports. It was with respect to
17:29:45 17 that surveillance the day or two before?

17:29:47 18 A. No.

17:29:47 19 Q. All right. Now, in your report, you tell Mrs. Huitron that
17:29:54 20 you're there to arrest her husband, correct?

17:29:57 21 A. That's correct.

17:29:58 22 Q. And he comes to the door and you arrest him?

17:30:01 23 A. That's correct.

17:30:01 24 Q. And I believe your report says without incident?

17:30:04 25 A. That's correct.

17:30:05 1 Q. Okay. Without incident means he was very cooperative with
17:30:09 2 you?

17:30:09 3 A. We didn't have any problems putting cuffs on him.

17:30:12 4 Q. Okay. And in your report, you don't say anything about him
17:30:18 5 mouthing off to you and I'll talk in any language I want, do you?

17:30:22 6 A. I didn't.

17:30:22 7 Q. Okay. Now, the consent to search form, you now ask -- and
17:30:29 8 you had a Spanish speaker agent with you, correct?

17:30:31 9 A. That's correct.

17:30:32 10 Q. You now ask Mr. Huitron and Mrs. Huitron, can we -- would
17:30:36 11 you give us consent to search your home?

17:30:38 12 A. Correct.

17:30:38 13 Q. And, of course, the search of one's home, that's very
17:30:44 14 personal to people, is it not?

17:30:45 15 A. Yes.

17:30:46 16 Q. Okay. And they said yes. Right?

17:30:48 17 A. Correct.

17:30:49 18 Q. And so, somebody read the form in Spanish, correct?

17:30:53 19 A. That's correct.

17:30:53 20 Q. And Mrs. Huitron signed the form?

17:30:57 21 A. No. That was signed by Eusevio. Mr. Huitron signed the
17:31:13 22 receipt.

17:31:14 23 Q. But the form was read to him because in the course of your
17:31:16 24 investigation, you know Mr. Huitron is illiterate. Can't read or
17:31:20 25 write?

17:31:20 1 A. No. I don't know that.

17:31:21 2 Q. You didn't know that?

17:31:22 3 A. I don't.

17:31:22 4 Q. Okay. But you do have forms in English and in Spanish, do

17:31:26 5 you not?

17:31:26 6 A. Yes.

17:31:27 7 Q. Okay. This form was in English?

17:31:29 8 A. This was in Spanish.

17:31:30 9 Q. It was in Spanish?

17:31:31 10 A. Yes.

17:31:31 11 Q. But it had to be read to him, correct?

17:31:34 12 A. Yeah. That's common.

17:31:36 13 Q. Okay. Did he take the time to read it before he signed it?

17:31:40 14 A. He was asked if he understood after it was read to him,

17:31:44 15 certainly which he said he did.

17:31:45 16 Q. Okay. Now, he then is put in handcuffs, right?

17:31:50 17 A. He was in cuffs.

17:31:51 18 Q. From the beginning?

17:31:51 19 A. Yes.

17:31:52 20 Q. Okay. Now, you go and you secure -- there's other children

17:31:55 21 or adult children who live in the home, correct?

17:31:58 22 A. Yeah. There were five adults. I believe the youngest was

17:32:02 23 16 or 17 at the time. Then there were some smaller children.

17:32:05 24 Q. Okay. And in Adrian Huitron's room, you find this cash.

17:32:10 25 A. Yes.

17:32:11 1 Q. And as a matter of fact, Adrian Huitron, was he put in
17:32:16 2 handcuffs and taken outside?

17:32:17 3 A. No. He was in the residence. He was cuffed for -- he was
17:32:21 4 detained initially.

17:32:22 5 Q. Sure. For safety purposes?

17:32:24 6 A. Correct.

17:32:25 7 Q. So the safety of the agents, correct? You say in your
17:32:28 8 report that Mr. Adrian Huitron was interviewed about that money.

17:32:36 9 A. That's correct.

17:32:36 10 Q. Okay. And he was interviewed, according to you, by Special
17:32:42 11 Agent Will Snodgrass.

17:32:43 12 A. Yes.

17:32:43 13 Q. And you even make reference to a DEA-6, dated June 12, 2012,
17:32:52 14 that apparently was written by Agent Snodgrass?

17:32:54 15 A. I made reference to that, the report was never written.

17:32:58 16 Q. Okay. So you make reference to a report that details Agent
17:33:03 17 Snodgrass' interview with Mr. Huitron, but he never writes up the
17:33:08 18 report?

17:33:08 19 A. It was never written.

17:33:09 20 Q. Okay. So you thought a report was going to be written, and
17:33:12 21 it was not?

17:33:12 22 A. That's correct.

17:33:13 23 Q. Okay. But Mr. Huitron explained to Agent Snodgrass --

17:33:18 24 MR. GARDNER: Excuse me, your Honor, which Mr. Huitron?

17:33:21 25 MR. ESPER: I'm not going to ask what he said.

17:33:22 1 MR. GARDNER: Okay.

17:33:23 2 Q. (BY MR. ESPER) Did Adrian Huitron give an explanation to

17:33:27 3 Agent Snodgrass about the money?

17:33:29 4 A. Yes.

17:33:29 5 Q. Okay. Now, this -- what's the name of this machine that

17:33:40 6 does --

17:33:42 7 A. Cellebrite?

17:33:43 8 Q. Does this also have the ability to retrieve fax messaging?

17:33:51 9 A. I've never seen it retrieve fax. It's essentially any

17:33:55 10 information that would be stored on a cellphone.

17:33:56 11 Q. Okay. And I believe there are 14 pages that were -- of

17:34:02 12 telephone numbers that were extracted out of Mr. Huitron's phone?

17:34:07 13 A. I'd have to look at the number of pages.

17:34:10 14 Q. Of course.

17:34:20 15 A. There are telephone numbers 13 of the 14 pages.

17:34:24 16 Q. Okay.

17:34:25 17 A. Last page.

17:34:25 18 Q. And on each page, it lists about 10 to a page, correct?

17:34:35 19 A. May I see that?

17:34:36 20 Q. Sure.

17:34:36 21 A. Actually, I believe on this page, there are 10, but they

17:34:39 22 give you the number of actual numbers that are on here.

17:34:42 23 Q. Okay.

17:34:43 24 A. So there's 11 on this phone, there would have been 100 --

17:34:48 25 well, the last three are recalls. Looks like 104 telephone

17:34:51 1 numbers stored on this phone.

17:34:52 2 Q. And a lot of them have telephone numbers for people that

17:34:56 3 live in Mexico, correct?

17:34:57 4 A. That's correct.

17:34:58 5 Q. Not just the three you identified?

17:35:00 6 A. There were additional numbers in Mexico.

17:35:02 7 Q. Okay. Now, did Mr. Huitron -- he had a cellular telephone,

17:35:07 8 did he not?

17:35:08 9 A. Yes.

17:35:08 10 Q. And that's where you got that information out of?

17:35:10 11 A. That's correct.

17:35:11 12 Q. Okay. And do you know this cellular telephone number?

17:35:15 13 A. It was 512-844-0095.

17:35:18 14 Q. Okay. And do you know -- and if you don't, simply say so --

17:35:21 15 whether you or anyone else have subpoenaed the subscriber

17:35:25 16 information for that?

17:35:27 17 A. It was subpoenaed. There was -- in fact, the day of the

17:35:31 18 arrest, there was a tracking warrant that would have already been

17:35:35 19 issued and installed on that phone. So that information was

17:35:40 20 acquired.

17:35:40 21 Q. And do you know -- and if you don't, simply say -- that he's

17:35:44 22 had that same phone number for a long time? Do you know?

17:35:47 23 A. I don't know.

17:35:48 24 Q. You don't know?

17:35:49 25 A. I don't know.

17:35:49 1 Q. Did you make any determination as to whether he had or not?

17:35:52 2 A. No.

17:35:52 3 Q. Did he have one of those Nextel push-to-talk phones?

17:35:56 4 A. Yes.

17:35:56 5 Q. He did?

17:35:57 6 A. Uh-huh.

17:35:57 7 Q. And can you extract numbers out of that?

17:36:01 8 A. Yes.

17:36:01 9 Q. And did you do that?

17:36:03 10 A. That's this report.

17:36:04 11 Q. That's that?

17:36:05 12 A. This is a Nextel phone.

17:36:06 13 Q. Okay. That's not out of the cellphone?

17:36:08 14 A. It's a cellphone. Correct.

17:36:10 15 Q. I'm sorry?

17:36:11 16 A. It's a Nextel telephone. You're able to make direct calls

17:36:15 17 as you normally would, 512-344. Or if you want to use the

17:36:19 18 push-to-talk or direct connect function, you put in the urban

17:36:24 19 fleet number.

17:36:24 20 Q. Okay. Now, I believe, your Honor, the last exhibit I have

17:36:30 21 for EH was, I think, 3, but I don't want to be mistaken.

17:36:37 22 THE CLERK: Wait a second. You're correct.

17:37:53 23 Q. (BY MR. ESPER) Mr. Hicks, I'm going to show you what I have

17:37:57 24 marked as Defendant's Exhibit EH-4 through 10 inclusive. Can you

17:38:00 25 identify those photographs?

17:38:03 1 A. The first photograph, which is Exhibit 10.

17:38:06 2 Q. Yes.

17:38:07 3 A. That's taken looking North 183, the business would be to the

17:38:12 4 left. There's a tire shop next to that business. That's a photo

17:38:16 5 of essentially the front -- one side of the tire shop, some hay

17:38:22 6 bales and the Highway 183.

17:38:25 7 Q. Okay. EH-9, what is that?

17:38:28 8 A. EH-9, I don't know.

17:38:31 9 Q. Is that part of the ranch?

17:38:33 10 A. I don't know.

17:38:33 11 Q. You don't know?

17:38:34 12 A. No.

17:38:34 13 Q. There's some horses in it.

17:38:36 14 A. Well, I don't know.

17:38:37 15 MR. GARDNER: Your Honor, we'll stipulate to the fact

17:38:39 16 to those are pictures taken by government agents at the Rianna

17:38:43 17 Woods address in Austin, Texas, the ranch of Eusevio and Jesus

17:38:46 18 Huitron.

17:38:47 19 MR. ESPER: Thank you, your Honor.

17:38:50 20 THE COURT: All right. EH-4 through 10 are admitted.

17:38:54 21 Q. (BY MR. ESPER) Mr. Huitron, you -- I'm sorry. Mr. Hicks,

17:38:59 22 you actually went out to the ranch, correct?

17:39:03 23 A. I've seen the ranch. Yes, sir.

17:39:04 24 Q. Okay. And is this the entry to the ranch?

17:39:11 25 A. It appears to be. Yes, sir.

17:39:12 1 Q. Okay. And I know you're probably not a horse aficionado.

17:39:19 2 A. No.

17:39:19 3 Q. But there is a pretty primitive, elementary-type facility,

17:39:24 4 is it not?

17:39:24 5 A. I wouldn't know, sir.

17:39:25 6 Q. You wouldn't know?

17:39:27 7 A. No.

17:39:27 8 Q. It's not anything like the Ponderosa or anything we used to

17:39:30 9 see on TV.

17:39:32 10 A. No, sir.

17:39:32 11 Q. No? Okay. Nothing elaborate to it?

17:39:35 12 A. Essentially my familiarity with this is driving down that

17:39:39 13 dirt road and making the corner. So I really don't have anything

17:39:42 14 to offer.

17:39:43 15 Q. Yeah. It's a very simple structure, is it not?

17:39:46 16 A. There's a house off in the distance. It's far away. I

17:39:52 17 couldn't tell you, sir.

17:39:52 18 Q. There's horses on it and the stables look a little

17:39:55 19 primitive, do they not?

17:39:57 20 A. Sir, I don't know.

17:39:58 21 Q. Okay. Is this the structure that is part of the stables

17:40:09 22 area?

17:40:09 23 A. I've only seen the structure from the road, which is

17:40:11 24 probably, I don't know, six, seven-hundred yards. I couldn't say

17:40:15 25 with certainty.

17:40:16 1 Q. Okay. Now, you said that when you walked into the office
17:40:27 2 area, the area was pretty much just wide open except for one door
17:40:33 3 and that was locked?
17:40:34 4 A. On the left side, that door was locked. Everything else,
17:40:37 5 the doors were open.
17:40:38 6 Q. Did you subsequently find out who used that particular
17:40:41 7 office that was locked?
17:40:42 8 A. I didn't. No.
17:40:43 9 Q. You didn't?
17:40:43 10 A. No.
17:40:46 11 Q. But that was the only -- that was the only part of the
17:40:50 12 structure that had any type of lock to it?
17:40:54 13 A. Other than the front door. Yes, sir.
17:40:56 14 Q. Okay. And was there anything of -- you found a bunch of
17:41:00 15 files, all kinds of files and documents, did you not?
17:41:03 16 A. A lot of files found there. I did not conduct the search
17:41:05 17 there.
17:41:06 18 Q. You didn't do any searching?
17:41:07 19 A. Not there. No, sir.
17:41:08 20 Q. All you did was just observe that -- the inside of those
17:41:13 21 premises?
17:41:14 22 A. Brought the key over, unlocked the front door, helped on the
17:41:18 23 security sweep and then, went back to the other location.
17:41:21 24 Q. Okay. Now, let's get to the key part. You did have a valid
17:41:26 25 lawfully executed search warrant for the training or the horse

17:41:31 1 facilities, correct?

17:41:34 2 A. You're talking about his ranch?

17:41:36 3 Q. Yeah. The ranch.

17:41:37 4 A. No.

17:41:37 5 Q. You didn't have a search warrant for that?

17:41:39 6 A. No.

17:41:39 7 Q. What did you have a search warrant for?

17:41:40 8 A. We had a search warrant for Huitron Homes at 4216 Highway

17:41:47 9 183.

17:41:48 10 Q. Okay. That's the -- that's not this ranch?

17:41:51 11 A. That's correct.

17:41:52 12 Q. So when you asked for the keys to the ranch, you did have a

17:41:59 13 search warrant for the actual office?

17:42:00 14 A. I didn't ask for keys to the ranch. I asked for keys for

17:42:04 15 Huitron Homes.

17:42:04 16 Q. And that was the -- and the Huitron Homes is out there where

17:42:07 17 this particular ranch is, correct?

17:42:09 18 A. No.

17:42:09 19 Q. It's not?

17:42:10 20 A. No.

17:42:10 21 Q. Okay. Mr. "Chevo" Huitron or Adrian Huitron gave you the

17:42:16 22 keys to the offices for Huitron Homes?

17:42:19 23 A. Correct.

17:42:19 24 Q. Okay. And this particular ranch out there, you didn't have

17:42:25 25 a search warrant for that, did you?

17:42:26 1 A. No.

17:42:26 2 Q. Did you get consent to go search?

17:42:28 3 A. No.

17:42:28 4 Q. You didn't?

17:42:29 5 A. Huh-uh.

17:42:30 6 Q. All of the Huitrons, "Chevo" Huitron, his wife, his

17:42:40 7 children, they were all very cooperative with law enforcement,

17:42:42 8 weren't they?

17:42:43 9 A. "Chevo." Which one is "Chevo"?

17:42:48 10 Q. He's the man right here, the one you put the handcuffs --

17:42:50 11 A. Eusevio, yes.

17:42:51 12 Q. They were all very cooperative with you?

17:42:53 13 A. Until he became a little agitated about not being able to

17:42:57 14 speak with his sons.

17:42:57 15 Q. Okay. And that's, of course, the agitation that you didn't

17:43:00 16 bother to note in your report?

17:43:01 17 A. No. It's fairly common.

17:43:03 18 Q. Okay. It's fairly common for people to be a little

17:43:06 19 irritated when somebody comes in their house at 6:00 in the

17:43:09 20 morning, guns a blazing, so to speak. I don't mean fire but --

17:43:11 21 MR. GARDNER: Your Honor.

17:43:13 22 Q. (BY MR. ESPER) Guns drawn and that's normal procedure, is it

17:43:15 23 not?

17:43:16 24 A. People like to be able to speak whatever language they like

17:43:20 25 in their house. Obviously in normal circumstances, you would

17:43:23 1 agree with them.

17:43:23 2 Q. And you had a Spanish-speaking agent there who could have

17:43:26 3 told you what he was saying?

17:43:27 4 A. On the premises?

17:43:29 5 Q. Well, you had somebody that read the consent to search form,

17:43:32 6 right?

17:43:32 7 A. That's correct.

17:43:33 8 Q. So if he was trying to say something to tell his son to do

17:43:37 9 something surreptitiously, there was an agent right there, wasn't

17:43:40 10 there?

17:43:41 11 A. No. It didn't matter what language he's speaking. If he's

17:43:43 12 speaking English to his son, I still want --

17:43:45 13 Q. You didn't want him speaking?

17:43:47 14 A. Correct.

17:43:47 15 Q. You didn't want him saying anything to anyone?

17:43:49 16 A. We don't want the adults communicating and creating a

17:43:53 17 security issue for the team that's there.

17:43:54 18 Q. Okay. Did you feel he was creating a security issue or you

17:43:57 19 just didn't know?

17:43:57 20 A. We didn't know.

17:43:58 21 Q. Okay. May I have just a moment, your Honor?

17:44:04 22 And you were out there for about two hours, were you

17:44:07 23 not, more or less?

17:44:12 24 A. The consent to search form was signed at 6:45. We probably

17:44:18 25 weren't on location more than two hours.

17:44:23 1 Q. And is Agent Snodgrass, is he assigned to the Austin DEA
17:44:31 2 office?
17:44:31 3 A. Yes.
17:44:32 4 Q. He is?
17:44:34 5 A. Uh-huh.
17:44:34 6 Q. Okay. That's all I have, your Honor.
17:44:45 7 THE COURT: Mr. Mayr.
17:44:48 8 MR. MAYR: Thank you, your Honor.
17:44:49 9 CROSS-EXAMINATION
17:44:49 10 BY MR. MAYR:
17:44:57 11 Q. Agent Hicks, I'm going to show you what I've marked as JH-2,
17:45:02 12 JH-3 and JH-4. Do you recognize those locations?
17:45:10 13 A. Looking at JH-2, I believe that's looking northbound on --
17:45:17 14 to Seeling Drive.
17:45:18 15 Q. Okay.
17:45:19 16 A. JH-4, I don't recognize that dwelling.
17:45:23 17 Q. Okay.
17:45:25 18 A. And JH-3, that appears to be the Seeling address. I'd have
17:45:30 19 to look at it from the very front.
17:45:32 20 Q. If you can pull up 418, please. A, sorry. Thanks. It was
17:46:06 21 an A. There we go.
17:46:08 22 A. That's 8008 Seeling Drive.
17:46:10 23 Q. Okay. And JH-3, that appear to be the same house?
17:46:16 24 A. That doesn't look like it from that angle.
17:46:18 25 Q. Do you recall if this is the house that was next door?

17:46:20 1 A. I don't recall.

17:46:21 2 Q. When you were out there at Eusevio Huitron's residence, did

17:46:26 3 you learn that his brother, my client Jesus Huitron, lived right

17:46:31 4 across the street from him?

17:46:32 5 A. No.

17:46:33 6 Q. Did you learn that his brother Isabel lived in the house

17:46:37 7 next door that I just showed you there, JH-3?

17:46:40 8 A. No.

17:46:41 9 Q. Could you help me figure out who would have discovered that

17:46:48 10 or learned about that? There's other individuals out there with

17:46:53 11 you, right?

17:46:54 12 A. Certainly. Our focus was pretty much we had one focus:

17:46:59 13 Execute the arrest warrant on Mr. Huitron at this residence and

17:47:03 14 that's where the plan was. Who his neighbors were at that time

17:47:06 15 was not a concern.

17:47:07 16 Q. Did you all have a search warrant for Jesus Huitron's

17:47:10 17 residence that day?

17:47:12 18 A. No.

17:47:13 19 Q. To your knowledge, has there ever been a search warrant to

17:47:16 20 obtain a search of Jesus Huitron?

17:47:19 21 A. I don't know.

17:47:20 22 Q. Okay. I have no further questions.

17:47:23 23 RE-DIRECT EXAMINATION

17:47:23 24 BY MR. GARDNER:

17:47:26 25 Q. Mr. Esper, I believe, made the statement to you that you

17:47:29 1 don't include everything in your offense reports. Do you recall
17:47:32 2 that?

17:47:32 3 A. Yes.

17:47:33 4 Q. Okay. I believe he showed you or referenced you a two-page
17:47:38 5 report?

17:47:38 6 A. Yes.

17:47:39 7 Q. Can you include everything that happens in a single day in a
17:47:44 8 two-page offense report?

17:47:45 9 A. No.

17:47:46 10 Q. And why not?

17:47:48 11 A. A lot of things happen that just aren't testimonial in
17:47:52 12 nature. Things happen that obviously you may not see because as
17:47:57 13 you break up on search teams, people basically conduct their job,
17:48:01 14 do their job, then there's a process for collecting the evidence,
17:48:05 15 and that's what you put in your report.

17:48:07 16 Q. So what's the purpose of that report in relation to your
17:48:10 17 testimony here today?

17:48:11 18 A. The purpose of the report is to document the issuance of the
17:48:15 19 arrest warrant, the consent to search that day, the parties that
17:48:18 20 were present during that search, the items that were seized
17:48:21 21 during that search, and that's essentially the nuts and bolts of
17:48:26 22 that report.

17:48:26 23 Q. And when you were preparing to execute the arrest warrant on
17:48:30 24 Eusevio Huitron, were you aware that you were possibly dealing
17:48:35 25 with either members or associates of the Zetas organization?

17:48:38 1 A. Yes.

17:48:39 2 MR. ESPER: Object, your Honor. I object.

17:48:40 3 MR. GARDNER: I believe he asked about why he was armed

17:48:42 4 and guns drawn, your Honor. I believe that's a fair response.

17:48:45 5 MR. ESPER: He said that's normal procedure for

17:48:48 6 executing a warrant.

17:48:49 7 THE COURT: He did. You asked him. You may answer.

17:48:52 8 A. I was aware.

17:48:54 9 Q. (BY MR. GARDNER) And were you aware that they are a

17:48:56 10 dangerous organization?

17:48:57 11 A. Yes.

17:48:57 12 Q. That's all I have, your Honor.

17:49:00 13 RE-CROSS EXAMINATION

17:49:00 14 BY MR. ESPER:

17:49:04 15 Q. Mr. Hicks, have you inquired of Agent Snodgrass why he did

17:49:08 16 not memorialize in a report what Adrian Huitron told him about

17:49:14 17 the money?

17:49:15 18 A. Yes.

17:49:16 19 Q. And has he given you an explanation?

17:49:21 20 MR. GARDNER: Your Honor, that would be hearsay. He

17:49:24 21 could call Mr. Snodgrass if he wants to. I've discussed it with

17:49:27 22 Mr. Esper. I told him I would make Agent Snodgrass available to

17:49:30 23 him if he so desires.

17:49:32 24 Q. (BY MR. ESPER) But you did ask him why he didn't memorialize

17:49:35 25 it?

17:49:35 1 A. Yes.

17:49:36 2 Q. Okay. That's all I have, your Honor.

17:49:45 3 MR. GARDNER: Nothing further, sir.

17:49:48 4 THE COURT: Members of the jury, I don't want anybody

17:49:50 5 ever to say I'm not nice to jurors. I'm going to give you nine

17:49:54 6 minutes. It will be hard because long weekend, but please

17:50:03 7 remember the instructions. 8:30 Monday so that you can answer

17:50:09 8 the questions that I ask each time. So don't talk or learn

17:50:14 9 anything about it. Don't read the paper about it if it's in

17:50:18 10 there. Just have a nice weekend and be back here Monday.

17:50:55 11 (Jury not present.)

17:51:01 12 THE COURT: Couple of things for the record. The

17:51:10 13 Defendant Colorado ended up with two Exhibit 9s. If you'd come

17:51:21 14 up here.

17:51:21 15 MR. DEGEURIN: If that's the worst I did today.

17:51:27 16 THE COURT: Well, the Court came up with two Court

17:51:30 17 Exhibit 4s. So other than being -- do you have any preference as

17:51:33 18 to how we renumber these?

17:51:35 19 MR. DEGEURIN: No. I do not.

17:51:36 20 THE COURT: Okay. So make the one with the picture of

17:51:40 21 the horses, not the witness, the next number, which is what?

17:51:51 22 THE CLERK: Ten.

17:51:52 23 THE COURT: Okay. Either way. So we're going to make

17:51:54 24 the picture of Raul Guadalajara-Guia No. 10 and the horses win.

17:52:07 25 Okay. And we'll make Court Exhibit, which is the memorandum of

17:52:13 1 interview, Court Exhibit 5, rather than 4.

17:52:23 2 Counsel, I've got a full day tomorrow of criminal
17:52:26 3 matters. I need to tell you that you're going to have to take
17:52:30 4 your equipment. If you want to leave it, John will help you a
17:52:37 5 little bit with it. But I wouldn't leave it in this room because
17:52:42 6 it will be full all day long with folks in criminal cases.

17:52:53 7 MR. GARDNER: Your Honor, as to demonstrative exhibits,
17:52:56 8 I don't know if the Court's concerned about the record including
17:52:58 9 the government's addition to Colorado.

17:53:01 10 MR. DEGEURIN: You can't add to it.

17:53:03 11 MR. GARDNER: Add something on my own.

17:53:04 12 THE COURT: I'm sorry, I don't.

17:53:05 13 MR. GARDNER: The government put this sticker on
17:53:08 14 Colorado.

17:53:10 15 MR. DEGEURIN: And I left it on there until the end of
17:53:13 16 the day and then, I gave it back to -- you can't add to my
17:53:16 17 exhibit without offering it.

17:53:18 18 THE COURT: You know, they used to be able just to take
17:53:22 19 the demonstrative exhibit and erase it on the board. So it was
17:53:28 20 attached, it remains attached. Just put it down at the bottom
17:53:32 21 where it doesn't bother you.

17:53:35 22 MR. DEGEURIN: On the back, upsidedown?

17:53:39 23 MR. FINN: In Spanish.

17:53:42 24 THE COURT: But that's the way it ended up.

17:53:45 25 All right. Anything else before we break for the week?

17:53:48 1 MR. GARDNER: Nothing from the government, your Honor.

17:53:50 2 THE COURT: All right. Y'all have a safe weekend.

17:53:50 3 (Proceedings adjourned.)

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